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Wye Electric Co., Inc. and International Brotherhood of Electrical Workers, Local Union No. 480, AFL-CIO.

Wye Electric Co., Inc. and International Brotherhood of Electrical Workers, Local Union No. 576, AFL-CIO.

Wye Electric Co., Inc. and International Brotherhood of Electrical Workers, Local Union No. 446, AFL-CIO.

Wye Electric Co., Inc. and International Brotherhood of Electrical Workers, Local Union Nos. 446, 480, and 576, AFL-CIO. Cases 15-CA-11993, 15-CA-12013, 15-CA-12076-2, 15-CA-12094, 15-CA-12094-2, and 15-CA-12215

September 14, 2006

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On July 7, 1995, Administrative Law Judge J. Pargen Robertson issued his Decision in this proceeding. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions, a supporting brief, and an answering brief to the Respondent's exceptions. The Respondent also filed an answering brief to the General Counsel's cross-exceptions and a reply brief to the General Counsel's answering brief.

On June 7, 2000, the Board remanded this proceeding to the administrative law judge. Thereafter, on September 29, 2000, the judge issued a Supplemental Decision. The General Counsel and the Respondent filed exceptions, supporting briefs, and answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision, supplemental decision, and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions, as modified below.

The judge found that the Respondent violated Section

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the judge's findings.

8(a)(3) and (1) of the Act by failing to hire Steve Barthel, Wayne Divine, Herbert Goudeau, Floyd Sandiford, Ronnie Fontana, Jerry Goudeau, Jerry Lambert, Joe Gallien, Mark Greer, and Sammy Yelverton. The judge also found that the Respondent failed to rehire Donald Phillips in violation of Section 8(a)(3) and (1). For the reasons set forth in the judge's supplemental decision, we adopt the judge's findings as to these applicants.²

For the reasons below, we reverse the judge's findings that the Respondent unlawfully failed to hire Hugh Britt, Michael Butler, Jackie Kuykendal, and Eric Sumrall. We also reverse the judge's finding that the Respondent did not violate Section 8(a)(3) in failing to hire Charles Jewell.³ For the reasons set forth by the judge, we find that the Respondent violated Section 8(a)(1) by threatening and interrogating employees.⁴ We reverse, however,

² Member Schaumber would find no violation in the Respondent's refusal to hire Joe Gallien and, for the reasons expressed in this footnote, also disagrees with the majority's finding below that the Respondent violated the Act in its refusal to hire Charles Jewell. Gallien, Jewell, and Richard Wynn all applied for employment at the same time. None of the three testified. The Respondent's president Young did, and his testimony stands uncontradicted. The Respondent knew all three employees were union members. Young believed that Gallien and Jewell would not be satisfied with the salary Respondent was offering. Although Gallien said he would, Young did not believe him. As a result, he offered neither applicant a job. Respondent did offer union member Wynn a job. Wynn convinced Young that he really wanted to work for Respondent at the wage level Respondent offered.

Member Schaumber disagrees with his colleagues' contention that it is clear that the judge discredited Young's explanation for his failure to hire Gallien and Jewell. While the judge indicated generally that he was "bothered by some of Young's testimony," the judge did not specify why he discredited him about this incident. More importantly, in the face of Young's hiring a union member (Wynn) and his plausible non-discriminatory explanation for not hiring the other two (Gallien and Jewell), Member Schaumber finds no violation here.

³ For the reasons in fn. 2 above, Member Schaumber would dismiss this allegation.

⁴ Member Schaumber would reverse the judge and find no 8(a)(1) violation in Marc Conerly's telling employee Charles Wallace that "Robert Young wanted to send Wallace to Alabama, that he was going to give Wallace an ultimatum; that they were going to be watching Wallace and if he screwed up they were going to terminate him." There is nothing in this statement that suggests any action would be taken because of Wallace's union activities. Indeed, the Respondent encountered absentee problems with Wallace. Consequently, the statement could just as easily have referred to those disciplinary "screw-ups." While the judge found that Wallace could reasonably have construed Conerly's comment to be a reference to Wallace's union activity, the judge did not articulate what basis Wallace would have had for that assessment and the General Counsel failed to fill that evidentiary void i.e., that the preponderance of the evidence supports a finding that Wallace had reasonably construed the statement as referring to his union activity. In the absence of such evidence, a violation has not been made out.

Member Schaumber finds it unnecessary to pass on the allegation that the Respondent unlawfully interrogated applicant Larry Nipper as such a finding would be cumulative to other unlawful interrogations found.

the judge's finding that the Respondent violated Section 8(a)(1) by threatening employee Robert Hill. We adopt the judge in all other respects for the reasons set forth in his decision.⁵

1. The Respondent is an electrical contractor based in West Monroe, Louisiana. Starting in September 1992, the Union began a "salting" campaign in which union applicants applied for work. Many of these applicants sought employment following the Respondent's placement of newspaper ads in West Monroe and Jackson, Mississippi, seeking electricians. Hugh Britt applied for employment in West Monroe with a group of such applicants. The Respondent's owner, Robert Young, later telephoned the other applicants who applied with Britt to discuss employment, but he did not call Britt. Young testified that he did not call Britt because there was a notation on Britt's file indicating that Britt smelled of alcohol when he applied.

When Britt applied, he personally gave his application directly to the Respondent's secretary Gaye Heckford. The judge credited Heckford's testimony that she could smell alcohol on Britt's breath when he applied. As a result, she wrote the comment "smelled strongly of alcohol" on Britt's application. Based on Heckford's notation, Young did not follow up on Britt's application. The judge found that, in light of Heckford's notation, Young reasonably believed that Britt had been drinking, but he credited the testimony of Britt and the other applicants that Britt, in fact, had not been drinking. On this basis, the judge found that the failure to hire Britt violated the Act.

We reverse. Assuming *arguendo* that the General Counsel met his initial burden under *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 889 (1st Cir. 1981), we find that the Respondent met its rebuttal burden by demonstrating that it did not follow up on Britt's application because of a nondiscriminatory reason: its reasonable belief that Britt had been drinking alcohol when he applied. Thus, Heckford's notation on Britt's application

provides a nondiscriminatory explanation for why Britt was treated differently than the other applicants of that day, who later received followup calls. The judge's finding of a reasonable belief on the part of the Respondent as to Britt's alleged drinking shows that the stated reason for its actions was not pretextual. Moreover, there is no evidence that the Respondent's decision not to consider Britt for employment represented a disparate enforcement of any pertinent rule or policy pertaining to the use of alcohol. In these circumstances, we find that the Respondent satisfied its burden under *Wright Line* by showing that it would not have hired Britt even in the absence of his union activity. *Jordan Marsh Stores Corp.*, 317 NLRB 460, 476 (1995) (reasonable belief of misconduct privileged discharge).⁶ Accordingly, we find that the failure to hire Britt did not violate the Act.

2. The judge found that the Respondent unlawfully failed to hire Michael Butler, Jackie Kuykendal, and Eric Sumrall. These individuals applied as a group with Project Manager Joey Chambola in West Monroe, Louisiana. Chambola told the applicants that it would be better for them to seek employment in the Jackson, Mississippi area, which was substantially closer to where they lived, and that he would give their applications to the Respondent's president, Young, for consideration. There is no evidence that any of the applicants objected to Chambola's offer to give their applications to Young instead of further considering the applications himself. Their applications, however, were misplaced and never reached Young for consideration, and there is no claim or evidence that the misplacement itself was unlawfully motivated. Thus, even assuming *arguendo* that the General Counsel met his initial *Wright Line* burden as to these applicants, the evidence shows that Butler, Kuykendall, and Sumrall were not hired in any event because of a nondiscriminatory reason: Young did not have their applications to consider in the first instance. In these circumstances, we find that Butler, Kuykendall, and Sumrall were not hired for reasons unrelated to their union activities.

3. The judge found that the Respondent lawfully failed to hire Charles Jewell because there was no written application from Jewell. In fact, Jewell did apply and the record contains his application. That application shows considerable job experience and qualifications and we find, therefore, that Jewell was qualified to perform in an available position. Accordingly, because the judge's

⁵ Contrary to our dissenting colleague, we adopt the judge's finding that supervisor Marc Conerly's threat to send employee Wallace out of state and terminate him violated Sec. 8(a)(1). The judge found that "it is inconceivable that the Respondent did not also consider Wallace's union activities in regard to getting him off the job." Thus, the judge expressly discredited Conerly's testimony that the threat pertained solely to Wallace's work attendance. Indeed, just prior to the threat, the Union advised the Respondent that Wallace was a Union member and Conerly previously had coercively interrogated Wallace about the Union and coercively told him that the Respondent's goal was to shut down unions in three states. In view of the judge's credibility resolution as to the nature of the threat to send Wallace out of state and terminate him, and the evidence of animus directed specifically toward Wallace, we are persuaded that Wallace reasonably would have construed Conerly's threat as pertaining to his union activities.

⁶ The cases the judge relied on are also distinguishable either because the respondent's claim of reliance on alcohol use as the reason for its action was discredited (*G. Wes Ltd. Co.*, 309 NLRB 225, 232 (1992)), or because there was evidence of disparate treatment regarding alcohol use (*Aratax Service*, 300 NLRB 115 (1990)).

dismissal as to Jewell was based entirely on an erroneous finding of fact, and the General Counsel met his initial *Wright Line* burden as to Jewell, which the Respondent has failed to rebut, we reverse and find that the Respondent violated Section 8(a)(3) and (1) by failing to hire Jewell.⁷

4. The judge found that the Respondent, through Supervisor Jim Cox, threatened employee Robert Joel Hill with possible layoff if there was unionization. We reverse.

Hill testified that, after discussions with another supervisor, he asked Supervisor Cox if the Respondent was going to lay off employees in order to “get to” (and lay off) a known union adherent. Cox replied simply that he did not know. Cox also stated that the Union previously had been unsuccessful in trying to organize the Respondent and that the Respondent would be less competitive if unionized.

We find that Cox’s statement that he “did not know” about a discriminatorily motivated plan to layoff employees was not coercive, even when viewed in conjunction with Cox’s following statements. Employee Hill initiated the conversation and Supervisor Cox, in response, was simply noncommittal about the matter that Hill brought up. In these circumstances, we find that the Respondent did not violate Section 8(a)(1), as alleged.

ORDER

The National Labor Relations Board orders that the Respondent, Wye Electric Co., Inc., Monroe, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees or job applicants about the Union; threatening its employees with termination because of their union activities; threatening its employees that the Respondent president’s goal is to shut down unions in Mississippi, Arkansas, and Monroe, Louisiana; and threatening its employees that an employee is being assigned to an out of state job in the hope that he will resign because of the Union.

⁷ Relying on the testimony of the Respondent’s president Young, our dissenting colleague would find no violation as to the Respondent’s refusal to hire Jewell and applicant Joe Gallien. But, the judge did not credit Young in pertinent respects. Although Young testified that he believed Jewell and Gallien were reluctant to work for the salary offered, the judge found that Jewell and Gallien indicated that they were willing to work for the wage rate offered and that the Respondent failed to prove that it would not have hired Jewell and Gallien in the absence of their union activity. Accordingly, we conclude that the judge did not credit Young’s explanation regarding these applicants. Further, we note that the judge found that there was “inherent inconsistencies” in Young’s testimony generally and that his testimony was “suspect” as to whether he considered union affiliation in hiring. In these circumstances, we find that the Respondent violated the Act as to Jewell and Gallien.

(b) Refusing to employ job applicants and refusing to recall an employee from layoff because of their union or other protected activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer immediate and full reinstatement and, in the case of Donald Phillips reinstatement, to the below listed employees in positions for which they applied and are qualified or, if not currently available, to substantially equivalent positions, and make them whole for any loss of earnings, plus interest, suffered by reason of its illegal actions. Backpay is to be computed on a quarterly basis as prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987):

Steve Barthel	Wayne Divine	Herbert Goudeau
Floyd Sandiford	Charles Jewell	Ronnie Fontana
Jerry Goudeau	Jerry Lambert	Joe Gallien
Mark Greer	Donald Phillips	Sammy Yelverton

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board, or its agent, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its West Monroe, Louisiana facility copies of the attached notice.⁸ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings the Respondent has gone out of business or closed the facilities involved in

⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an order of the National Labor Relations Board.”

these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 28, 1992.

(d) Within 21 days after service by the Region, file with the Regional Director, a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. September 14, 2006

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice

FEDERAL LAW GIVE YOU THE RIGHT TO

Form, join, or assist a union.

Choose representatives to bargain with us on your behalf.

Act together with other employees for your benefit and protection.

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate you about your union activities.

WE WILL NOT threaten you with termination because of your union activities or threaten you that our goal is to shut down unions in Mississippi, Arkansas, and Monroe, Louisiana, or threaten to reassign you to an out of state job in the hope that employees will resign because of the Union.

WE WILL NOT refuse to employ applicants because of their union or protected activities and WE WILL NOT re-

fuse to recall an employee from layoff because of his union or protected activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights protected by Section 7 of the National Labor Relations Act.

WE WILL, within 14 days from the date of the Board's Order, offer reinstatement to, and in the case of Donald Phillips, reinstatement, to the employees listed below, and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of our unlawful action, less any interim earnings, plus interest.

Steve Barthel	Wayne Divine	Robert Goudeau
Floyd Sandiford	Charles Jewell	Ronnie Fontana
Jerry Goudeau	Jerry Lambert	Joe Gallien
Mark Greer	Donald Phillips	Sammy Yelverton

WYE ELECTRIC CO.

Bruce E. Buchanan, Esq., for General Counsel.

H. Mark Adams, Esq., and *Carl D. Rosenblum, Esq.*, of New Orleans, Louisiana, for Respondent.

Michael D. Lucas, of Washington, D.C., for Charging Party.

DECISION

J. PARGEN ROBERTSON, Administrative Law Judge. This hearing was on December 5, 6, 7, 12, 13, 14, and 15, 1994 in Monroe, Louisiana. The charges were filed between January 8 and July 14, 1993. A second consolidated complaint issued on September 28, 1994.

JURISDICTION

Respondent admitted that it is a corporation with an office and place of business in West Monroe, Louisiana, where it is an electrical contractor. It admitted that during the 12 months ending June 30, 1993, it performed services valued in excess of \$50,000 in states other than Louisiana. It received at its West Monroe place of business goods valued in excess of \$50,000 from directly outside Louisiana. It admitted that it is engaged in commerce within the meaning of section 2(2), (6), and (7) of the National Labor Relations Act (Act), at all material times. In view of those admissions and the full record, I find that Respondent is an employer engaged in commerce as defined in the Act.

Labor Organizations

Respondent admitted that International Brotherhood of Electrical Workers, Locals 446, 480, and 576, AFL-CIO, (Union or Unions) have been labor organizations within the meaning of section 2(5) of the Act, at all material times.

The Unfair Labor Practice Allegations

It is alleged that Respondent interrogated and threatened employees, refused to hire, laid off and isolated employees because of employees' protected concerted and union activity and in order to discourage membership in a Union.

The parties stipulated that the Union Local 480 filed a petition to represent all journeymen and apprentice electricians at Respondent's St. Dominic's Hospital (also called Doctors Hospital) job site in Jackson, Mississippi. An election was held on November 17, 1989. The Union received 13 votes, there were 5 votes against the Union and there were 9 challenged ballots. On July 2, 1990, a revised tally of ballots issued. There were 13 votes for and 14 votes against the Union.

Record documents show that Respondent wrote employees opposing the Union in the 1989 election at Jackson.

The section 8(a)(1) allegations

The complaint included allegations of section 8(a)(1) violations beginning in September 1992 and extending into March 1993.

September 28, 1992

Harry Richardson: (1) Interrogations; (2) Told employees that applications were being sent to the principal office because employees were engaged in union activities:

Larry Nipper applied for work with Respondent on September 28, 1992, at Doctors Hospital in Jackson Mississippi. During his employment interview Nipper spoke with Harry Richardson. Richardson was acquainted with Nipper. Nipper testified about Richardson's comments:

Well, he mentioned something about—he said four of my union brothers, I guess, or union members, had come out earlier in the day and put in applications. And he asked me why I wasn't wearing my union button, like they were.

....

I told him I didn't have a button, you know, that I just came to see him about a job.

....

He didn't give me names. He told me one of them was the business agent and asked me did I know him. And I said, Well, no; You know, I know all the business agents that—you tell me the name, and I can—give me some reference there.

Although he worked for a union contractor, Nipper was on the same job performed by Respondent during the 1989 union campaign. He testified in a hearing on behalf of the Union.

Sammy Yelverton is assistant business agent and organizer at Local 480. Yelverton testified that he filed an employment application with Respondent on September 28, 1992. Yelverton was interviewed by Harry Richardson. Yelverton asked Richardson how many people had applied for the job. Richardson told him that he was the eighth applicant. Richardson said that he had four applicants from the Union that morning and one of them was an assistant business manager. After talking about Yelverton's experience, Richardson said "I have to ask you this, are you a Union member?" Yelverton admitted that he had been a member. After more discussion about the job, Richardson told Yelverton they would probably call him either September 30 or October 1. Yelverton did not hear from Respondent. He returned to the job on October 8, and talked with

Harry Richardson. Richardson said they were not hiring at that time.

Tim Harkins a member of Local 480 applied for work with Respondent at Doctors Hospital, Jackson, on September 28, 1992. He completed an application and gave it to Harry Richardson. Richardson asked about Harkins experience. Then he asked if Tim knew Buddy Harkins. Harkins responded that Buddy was his uncle. Richardson said that he had been foreman for Buddy. Harry Richardson asked Harkins if he was familiar with the Union. Harkins replied no. Richardson said that he had some union folks from the Hall come down.

Harry Richardson is no longer employed by Respondent. He testified that he never questioned an employee or an applicant about union activities, membership or sympathies.

Credibility

As to all my credibility findings, I rely extensively on the demeanor of the witness as well as probability, corroboration, and the full record.

I found Larry Nipper to be a straightforward, candid witness. He appeared to respond fully to both cross and direct examination. I credit his testimony.

Sammy Yelverton appeared to testify truthfully under both cross and direct examination. He was not evasive and answered without hesitation even though some of the answers appeared harmful to the union position. He admitted that covert job applicants are sometimes instructed to give false resume information. I credit the testimony of Sammy Yelverton.

As shown below, I find Tim Harkins to be a credible witness and I credit his testimony.

As shown in more detail below, I found that Harry Richardson was not a credible witness. I do not credit Richardson's testimony to the extent it conflicts with credited evidence.

Findings

The credited testimony of Nipper shows that Harry Richardson knew Nipper was in the Union on September 28, 1992. Richardson asked Nipper why Nipper was not wearing his union button and about the identity of a union business agent that had applied for work with Respondent.

Sammy Yelverton's credited testimony shows that when he applied for work on September 28, Harry Richardson asked him if he was a union member. Yelverton was Local 480 assistant business agent and organizer.

The above evidence proved that admitted Supervisor Harry Richardson interrogated Larry Nipper, Tim Harkins, and Sammy Yelverton about the Union on September 28, 1992. Nipper was known by Richardson as a union member. Under *Rossmore House*, 269 NLRB 1176 (1984), there is a question of whether Richardson's actions constitute a violation of section 8(a)(1) of the Act. When an employee demonstrates his advocacy for the Union, the Board and Courts have found that some interrogation by supervisors does not constitute a violation of the Act.

In *Waste Management of Utah*, 310 NLRB 883, 890 fn. 24 (1993) the test was stated "whether under all the circumstances the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act." See also *Phillips Indus-*

tries, 295 NLRB 717, 733 (1989), where interrogation of a known union supporter did constitute a section 8(a)(1) violation.

Here, in consideration of all the circumstances, I find that Richardson's interrogations of Nipper, Harkins, and Yelverton constitute separate interrogations in violation of Section 8(a)(1). Although Nipper was union member, Richardson did not know that either Harkins or Yelverton were with the Union. Moreover, the import of Richardson's questioning of Nipper went beyond the usual questioning of an employee that is a member of a Union. Nipper was not known to have been involved in the Union's efforts to organize Respondent. Richardson had just encountered several union organizers seeking employment. He asked Nipper about an applicant that claimed to be a union business agent and he wanted to know why Nipper was not wearing a union button. I find that questioning reasonably tends to restrain, coerce and interfere with section 7 rights. Richardson's questioning was coercive as to union members that may have been involved in the Union's salting program and had the tendency of discouraging union members applications for employment.

Applicants as potential employees, are accorded the protection of the Act. *NLRB v. Mount Desert Island Hosp.*, 695 F.2d 634, 638 (1st Cir. 1982). As to the questioning of Harkins and Yelverton, the evidence shows they were not known to be with the Union. Under *Town & Country Electric, Inc. v. NLRB*, 34 F.3d 625, 147 LRRM (BNA) 2133; cert. granted 115 S.Ct. 933, 130 L.Ed. 2d 879 (1/23/95); *Town & Country Electric, Inc.*, 309 NLRB 1250 (1994); there is a question of whether Yelverton was an employee and entitled to the protection of the Act. Yelverton was an assistant business agent of the Union. As shown herein, NLRB precedent in that regard holds that Yelverton was an employee. *Town & Country Electric, Inc.*, 309 NLRB 1250 (1994). Neither Harkins nor Nipper were shown to be either a paid or unpaid union organizer. Therefore, I find there is no question but that Harkins and Nipper were employees.

October 2, 1992

Joey Chambola: Interrogations

Charles Wallace applied for work with Respondent on October 2, 1992. He was interviewed by Joey Chambola. Chambola asked Wallace how he came to be in the area. Wallace told him that his fiancée was from the area. Wallace told Chambola that he had gone to Trio Electric looking for work and they had referred him to Respondent. Wallace testified that Chambola "asked me if I was union, and I told him, No, Sir; I didn't know much about it."

Joey Chambola testified that he hired Charles Wallace after Wallace submitted his application on October 2, 1992. He hired Wallace for one of his projects and he did not consult with Robert Young on the hiring of Wallace. Chambola denied that he asked Wallace if he was union. He denied knowing or caring whether Wallace was with the Union. Chambola denied that he has ever asked an applicant if he was in the union. Chambola denied knowing whether any of the previous employers listed on Wallace's application are union or not.

Robert Young did not know Charles Wallace was an IBEW member when Wallace was hired in October or November 1992.

Joey Chambola admitted that Respondent received a letter from the Union advising them that Wallace was in the Union. He denied knowing that Wallace was in the Union until seeing that March 15, 1993, letter. Chambola admitted that Charles Wallace was transferred to Respondent's job in Montgomery Alabama. He denied that Wallace's union affiliation had anything to do with that transfer.

Credibility

Charles Wallace testified without evasion and he admitted falsifying his job application. I found that he appeared to testify candidly on both cross and direct. Despite the falsification of his application, I was impressed with his overall demeanor. I have cautiously examined his testimony and his prehearing affidavits and have decided to credit his testimony except in those areas where I am convinced that his testimony was incorrect.

Joey Chambola appeared to testify truthfully most of the time. However, I am troubled about portions of his testimony. He was unable to recall why a job became available on the afternoon of October 2, 1992, even though when several union people applied that morning, there were no jobs available. Additionally he testified that he did not hire applicants from Laurel, Mississippi, because they were 100 miles away. He could not account as to why he hired applicants from Alexandria and Shreveport, Louisiana, even though those applicants lived 100 miles away. Afterward Chambola testified that Laurel was actually 200 miles from Monroe. I have examined Chambola's disputed testimony and have credited only those portions that impressed me as truthful in view of the entire record.

FINDINGS

As to this incident I credit the testimony of Charles Wallace. The testimony proved that Wallace was asked whether he was union during his job application interview on October 2, 1992. At that time Wallace was not a known union supporter. I find that interrogation constitutes a violation of section 8(a)(1) of the Act. *Arakelian Enterprises, Inc.*, 315 NLRB 47 (1994).

October 13, 1992

Harry Richardson: Interrogation

Stacey Williams applied with Respondent at Doctors Hospital on October 13, 1992. Williams spoke to Harry Richardson. Richardson asked him about his experience and how he got word about the job. Richardson asked him for references and asked if he was a union electrician. Stacey Williams replied that he was not a union electrician. Williams testified that he tape recorded that conversation with Harry Richardson.

The parties agreed that the actual tape recording included a comment by Richardson, "Is Richard Spence in the union?" The tape does not reflect that Richardson asked Williams if Williams was a union electrician.

Harry Richardson testified that he never questioned an employee or an applicant about union activities, membership or sympathies. He specifically denied questioning Stacey Wil-

liams about the Union. Richardson testified that Williams asked him if Respondent was union and Richardson told him it was not. Richardson then looked at Williams' application and asked "Is Spence union?" Richard Spence was listed on Williams' application as a personal reference and as his last employer. Richardson admitted that he listened to a tape recording of his conversation with Stacey Williams before he testified in this hearing. Richardson testified that the tape recording had been altered and did not include Williams asking if Wye Electric was union.

Richardson admitted that he hired Stacey Williams. Respondent admitted that Richardson was a supervisor and agent.

Credibility

I was not impressed with Harry Richardson's testimony. I do not credit his testimony to the extent it conflicts with other evidence. I specifically discredit his testimony that the tape recording of a conversation between him and Stacey Williams had been altered. There was no other evidence to support that contention.

Stacey Williams did not impress me as a credible witness as to his complete testimony. His testimony conflicted with a tape recording made by him of a conversation with Harry Richardson. I credit the evidence contained in the tape recording.

Findings

As shown above I credit the evidence contained in the tape recording. I do not credit Stacey Williams or Harry Richardson to the extent either testimony conflicted with the tape recording. The credited tape recording proved that Harry Richardson questioned Stacey Williams during his job application interview on October 13, 1992, as to whether Williams' former employer was union. At the time of the interview Stacey Williams was neither a known union supporter nor was he employed by the Union. That question by Richardson tends to coerce employees. *NLRB v. Mount Desert Island Hospital*, 695 F.2d 634 (1st Cir. 1982); *Lewis Mechanical Works*, 285 NLRB 514 (1987). Williams was put in a position of admitting or denying that he had worked for a union employer. I find that questioning constitutes interrogation about union affiliation in violation of section 8(a)(1) of the Act. *Waste Mgmt. of Utah*, 310 NLRB 883 (1993).

October 19, 1992

Harry Richardson

Eddie Roberts testified that he applied with Respondent at Doctors Hospital in Jackson, Mississippi, on October 19, 1992. Roberts testified that he wore a Union button illustrating that he was a union organizer with IBEW Local 480. He spoke with Harry Richardson:

We talked about my—he said he had worked with my father which I was unaware of that, but anyway, and after that he said he would take my application and send it every Friday and would send it to Monroe, Louisiana, and if they needed me, they would get in touch with me.

Credibility

As shown above I was not impressed with Harry Richardson's demeanor. I do not credit his testimony to the extent it conflicts with other evidence.

I found Eddie Roberts to be a candid witness. He appeared to truthfully respond to questions regarding Union control over his work. I credit his testimony.

Findings

Although I credit the testimony of Eddie Roberts, I see nothing in the above quoted testimony that supports a finding of a section 8(a)(1) violation.

November 16, 1992

John Robertson: Threat of Discharge

Respondent admitted that John Robertson was a supervisor at one time. It admitted that he was foreman on a job in Montgomery, Alabama. However Respondent denied that Robertson was a supervisor before spring 1993.

Joey Chambola is an estimator and project manager. He is a supervisor for Respondent. He has been project manager on several of Respondent's jobs including the Montgomery, Alabama—Wastewater Treatment job. Chambola testified that John Robertson was an electrician on a number of his projects until the job in Montgomery. On that job John Robertson was foreman.

Charles Wallace admitted that John Robertson's duties changed when both he and Robertson transferred to the Montgomery job. Before that time Robertson worked mostly with his tools. At Montgomery Robertson did not work with his tools much at all. In Montgomery, unlike before, Robertson conducted safety meetings and enforced safety regulations. Also unlike before that time, at Montgomery Robertson had a book with his name and his title of foreman for Wye written on the book. Before Montgomery Robertson did not represent himself as a foreman. On the Montgomery job Robertson did represent himself as foreman. On the Montgomery job Robertson was Respondent's contact with the general contractor. That was not the case before that time. At Montgomery, unlike before that time, Robertson passed out the employees' paychecks. At Montgomery Robertson drove the Company truck. Before then he drove his own truck.

Steve Williams testified that he was a helper electrician in 1992. After Steve Williams worked for Respondent for about 1-1/2 months, John Robertson told Williams that he was being laid off for lack of work. Robertson said that came from Joey Chambola. Williams had worked with Robertson. Robertson kept their time. On one occasion at a job in Bastrop, he and Robertson had worked 45 minutes overtime. Williams asked if they would get overtime. Robertson replied no that Mr. Young does not like to pay overtime on those jobs and they would just knock off 45 minutes early another day and charge for that time.

Robertson did journeyman work and he directed Williams where to work during the day. On occasions there were other workers in addition to Robertson and Williams. Robertson ran the job even when there were workers in addition to him and

Williams. Robertson would direct them on what needed to be done. Robertson was given gas to operate his truck. He wrote a ticket and the gas was paid for by Respondent. Williams testified that he was never reimbursed for gas he used in driving to work. Robertson checked with Joey Chambola on new jobs.

John Robertson testified that he did not have the authority to hire, fire or discipline employees in 1992. He was classified as an electrician at that time. He did not have the authority to direct the work of others. He received his daily assignments from Joey Chambola, as did Steve Williams. He and Williams received their assignments from Chambola at the same time each morning. Chambola was Robertson and Williams' supervisor at that time. Robertson had nothing to do with Williams termination in 1992. He testified that Chambola asked him to tell Williams to report to the office. Robertson admitted that when he did that he may have told Williams that it might be termination.

Robertson testified that he did not have authority to assign overtime. However, he admitted that when it was necessary to work overtime the employees would agree to go ahead and work then take off early the next day. He testified that he would record the hours actually worked instead of showing 8 hours each day.

After working for Respondent in 1992, Steve Williams applied for work with Respondent again in 1993. At that time Williams wrote in that his supervisor with Respondent when he worked there in 1992 was Joey Chambola. He admitted that he had testified in a prehearing affidavit that he had never been told that John Robertson had authority over him.

John Hopkins delivered a letter to Robert Young on November 16, 1992. Hopkins testified that John Robertson and Steve Williams were in Respondent's office when he delivered the letter.

Steve Williams testified that he and John Robertson were in the office awaiting another job assignment. An apprentice, Byron Moss, was also in the office at that time. John Hopkins came in and handed a letter to Joey Chambola. John Robertson looked over Chambola's shoulder while Chambola read the letter.

The letter delivered by Hopkins included the following:

This letter is written on behalf of Local 446, International Brotherhood of Electrical Workers Union, for the purpose of advising you that Mr. Don Phillips, an employee of yours is also a member of the Union.

Later that day Williams was in John Robertson's truck. Robertson remarked that Williams did not know who that was that came in with that letter. When Williams affirmed that he did not know Hopkins, Robertson said that was one of the radical union hands delivering that letter. Robertson said "we had trouble with this before in Jackson, and that they tried to organize it in Jackson, but they didn't succeed." Robertson went on to say that "once the letter gets to Mr. Young, that - he will not be working for the company any more."

Williams did know John Hopkins. Williams had been in the Union in the early 1980 and was interested in getting back into the Union. It was John Hopkins that asked Williams to go to Respondent to apply for work.

John Robertson admitted that he was in the office when someone delivered a letter to Joey Chambola. Robertson denied that he knew the man that delivered the letter. He denied that he knew John Hopkins. Robertson testified that Steve Williams asked him about the letter but he told Williams that he did not know. He denied that he told Williams the letter had been delivered by a radical union man. Robertson denied that he said that a union man would not be working long once Robert Young found out about it. Robertson testified that he did not recall telling either Young or Chambola that Williams had asked about the letter.

Robert Young testified that he was not involved in the discharge of Steve Williams. He denied that Williams was fired because of the union or because he had heard that Williams was asking about the letter delivered by John Hopkins. He had not heard that Williams was inquiring about that letter.

Credibility

As shown above, I rely extensively on the demeanor of the witnesses as well as factors including probability and corroboration.

The testimony of Robert Young was usually unremarkable. However, I am not convinced that Young was candid in his explanation of why he did not hire some of the applicants. I am doubtful as to the sincerity of his testimony that the Union was not a consideration in his decision to hire or fire employees.

In a prehearing affidavit, John Robertson admitted that he read a portion of the letter over Joey Chambola's shoulder and that the letter said something about the Union representing Don Phillips. During the hearing Robertson denied that his statement in the affidavit was correct. That affidavit was given by Robertson on January 20, 1993. I find that Robertson was not a credible witness.

Joey Chambola appeared to testify truthfully most of the time. I am troubled about portions of his testimony. I have examined Chambola's disputed testimony and have credited only those portions that impressed me as truthful in view of the entire record.

I have cautiously examined Charles Wallace's testimony and his prehearing affidavits and have decided to credit his testimony except in those areas where the record convinced me that his testimony was incorrect.

Steve Williams testified without evasion. He appeared to respond fully on both cross and direct. His testimony regarding the supervisory authority of John Robertson, oftentimes did not agree with the position of General Counsel. I am impressed with his demeanor and I credit his testimony.

John Hopkins appeared to testify truthfully. He admitted that he asked Marc Conerly for information from Respondent including dates of hire and application dates. He denied that he asked Conerly to perjure himself in order to assist the Union. I found no reason to suspect that Hopkins was untruthful. I credit his testimony.

Findings

The supervisory question:

Respondent denied that John Robertson was a supervisor during his work in 1992. It admitted that Robertson was a su-

pervisor during his assignment to the Montgomery Alabama job in 1993. I find that the record supports Respondent.

General Counsel argued that Robertson was a supervisor before his assignment to Montgomery citing *Atlanta Newspapers*, 306 NLRB 751, 756 (1992); and, alternatively, that Robertson was an agent citing *Technodent Corp.*, 294 NLRB 924 (1989) and *Tyson Foods*, 311 NLRB 552, 565–566 (1993).

The evidence including the testimony of Steve Williams who was Robertson's helper during the disputed period, shows that Robertson was not considered a supervisor. Instead Williams considered his supervisor was Joey Chambola. Robertson did journeyman work with his tools as did other electricians. The instances where Robertson appeared to engage in work associated with independent judgment included his telling Williams on one occasion they would take off early on a later date rather than taking 45 minutes overtime and his telling Williams that Williams was being laid off. Robertson told Williams that he should see Joey Chambola if he had questions regarding the layoff. In that situation I am convinced that Robertson did nothing more than convey to Williams a message from Chambola. Regarding the 45 minutes overtime, I am not convinced that one incident evidences use of independent judgment. Apparently Robertson considered his action was in accord with standard practice. However, in any event, it is apparent that the exercise of independent judgment was not included in Robertson's duties in 1992. I find that the record does not support a finding that Robertson exercised independent judgment as part of his duties in 1992. The record failed to show that his duties included the exercise of supervisory authority. *Brown & Root, Inc.*, 314 NLRB 19 (1994); *Adco Electric Inc.*, 307 NLRB 1113 (1992); enf'd 6 F.3d 1110 (5th Cir. 1993).

The alleged unlawful action:

In view of the full record and my credibility findings, the credited record shows that while Steve Williams was in John Robertson's truck, Robertson remarked that was one of the radical union hands delivering that letter. Robertson said "we had trouble with this before in Jackson, and that they tried to organize it in Jackson, but they didn't succeed." Robertson went on to say that "once the letter gets to Mr. Young, that - he will not be working for the company any more."

However, as shown above, I find that General Counsel failed to prove that John Robertson was a supervisor or agent of Respondent at the time of the above conversation. Therefore, I find that General Counsel did not prove that Respondent engaged in a section 8(a)(1) violation on that occasion.

Late November 1992

John Robertson:Threat of discharge

Charles Wallace testified that while he was working for Respondent, he talked with John Robertson while riding to a job in late November or early December:

A. Well, it—Steve (Williams) had been helping him (John Robertson) for the past week or so—a couple of weeks. And I knew that he was—Steve was his helper. So I hadn't seen Steve, so I had asked John where Steve was or, you know,

had he been missing work or if something was wrong, or something. And he said that he had let Steve go, he had to fire him.

....

A. Well, I asked him why, what was the reason for him being, you know, fired. And he said that he was lazy and fat and couldn't get around very well and that he just couldn't use him, he wasn't working out.

....

A. He said that Robert Young didn't like him (Steve Williams), either, that he had been through four years of apprenticeship and that there was a letter brought on behalf of another union member there and Steve was nosing around about it. And he didn't like it.

....

Q. Okay. Besides the fact that he talked about Mr. Williams being in the apprenticeship program, did he refer to anything else union related in that conversation?

A. That he didn't like unions.

Q. Okay. Did he refer to Mr. Young's feelings about unions?

A. He—that Robert didn't like unions.

Q. Okay. Did you have any further conversations with Mr. Robertson about this matter?

A. Yes, sir.

....

Q. Okay. How did he—how did the subject of the unions come up?

A. Work being slack—I made a comment to John about work being slow. I had missed some time during that month. And he had made a comment that they had a job up in Alabama that was supposed to be a pretty good sized job—or that they were bidding on it at the time and that he thought they was going to be getting it.

And I made a comment that I might be interested in going up there. And he said that they couldn't hire out of town; they had to hire locally. So I asked him if it was going to be a union job. And he said that—no way, that Robert hated the unions, he didn't want no part of it, that they didn't have anything to do with the union.

John Robertson denied having the above conversation with Wallace. He denied telling Wallace that Young hated unions.

Credibility

As shown above, I have examined Wallace's testimony and his prehearing affidavits and have decided to credit his testimony except in those areas where the entire record convinced me that his testimony was incorrect.

I do not credit the testimony of John Robertson.

Findings

Even though I credit Wallace's testimony as quoted above, I find that General Counsel failed to prove that John Robertson was a supervisor or agent of Respondent at the time of the conversation. Therefore, I find that General Counsel did not prove that Respondent engaged in a section 8(a)(1) violation on that occasion.

Despite Robertson's comments to Wallace to the effect that he had discharged Steve Williams, the full record shows that

Robertson did not make that decision. The record failed to show that Robertson exercised supervisory authority during that period of time.

December 3, 1992

John Robertson: Told and employee that Owner Robert Young had denigrated an employee because of his union activities:

Charles Wallace testified that he talked with John Robertson about Steve Williams in late November or early December 1992:

... , so I had asked John where Steve was or, you know, had he been missing work or if something was wrong, or something. And he said that he had let Steve go, he had to fire him.

....

.... And he said that he was lazy and fat and couldn't get around very well and that he just couldn't use him, he wasn't working out.

....

He said that Robert Young didn't like him (Steve Williams), either, that he had been through four years of apprenticeship and that there was a letter brought on behalf of another union member there and Steve was nosing around about it. And he didn't like it.

Robertson denied making those comments to Wallace.

Credibility

As shown above I do not credit John Robertson's testimony over other evidence.

Regarding Charles Wallace, I have examined his testimony and have decided to credit his testimony except in those areas where the entire record convinced me that his testimony was incorrect.

Findings

Even though I credit Wallace's testimony as quoted above, I find that General Counsel failed to prove that John Robertson was a supervisor or agent of Respondent at the time of the conversation. I find that General Counsel did not prove that Respondent engaged in a section 8(a)(1) violation on that occasion.

December 15, 1992

James Cox: Threaten with layoffs

Robert Joel Hill testified that he talked with Project Manager James Cox on the Doctors Hospital job in late December 1992. After learning that Stacey Williams supported the Union, Hill asked Cox if he was going to lay everyone off to get to Stacey Williams. Cox replied that he didn't know; "that the union was going to try and come in and get a vote and they had tried once before and failed." Cox said that "if the union did come in that Wye Electric would be less competitive in the area."

Project Manager Jim Cox admitted that Hill did tell him that he had heard rumors that Respondent was going to lay off employees in order to get rid of Stacey Williams. Cox recalled that conversation occurred during the last couple of weeks of the Jackson job. Cox recalled that he told Hill:

... that the job was almost over and I needed for everybody to work and get the job done so we could get out of there and that the people that worked were going to be my first choice to go to the next job.

Credibility

Jim Cox appeared to have some difficulty in recalling events in late 1992. In most respects he appeared to testify truthfully.

I credit the testimony of Robert Joel Hill that he did not reveal his union affiliation when he applied for work with Respondent. Hill appeared to testify truthfully and I credit his testimony regarding the phone call he overheard being made by Harry Richardson and his conversations with Richardson and James Cox regarding the possible layoff of Stacey Williams.

Findings

The credited testimony of Joel Hill shows that when he asked if Respondent would lay off employees in order to lay off known union supporter Stacey Williams, admitted supervisor James Cox failed to rule out such a lay off. Instead Cox held out that he did not know whether employees would be laid off because of Williams' support of the Union and that if the Union came in it would make Respondent less competitive. I find those comments constitute a threat of possible adverse action because of the Union in violation of section 8(a)(1) of the Act. *Vemco, Inc.*, 304 NLRB 911 (1991); enf'd in part, remanded 989 F.2d 1468 (6th Cir. 1993); amended 997 F.2d 1149 (6th Cir. 1993); 9 F.3d 1548 (6th Cir. 1993); Decision Supplement in *Vemco, Inc.*, 315 NLRB 200 (1994); *Horton Automatics*, 289 NLRB 405, 407 (1988); affirmed 884 F.2d 574 (5th Cir. 1989); cert. denied 494 U.S. 1079 (1990).

Mid-December, 1992

Marc Conerly:Threat: Told employees they were being more closely observed:

Charles Wallace testified that he and David Greer were with Marc Conerly in mid December on a job at Dixie Bonded Warehouse in West Monroe. Conerly said that unions weren't strong in the south. He said that Robert Young did not like unions and one of Young's main goals was to shut unions down completely in Mississippi, Arkansas, and Monroe.

Marc Conerly voluntarily resigned his job with Respondent to form an electrical contractor with Brian Smith. He denied that Respondent ever told him to do anything regarding any employee because of the employee's union membership. He denied that he was told to observe any employee because of the employee's union membership and he denied the he ever threatened or was told to threaten any employee because of the employee's union membership.

Credibility

Marc Conerly was cautious in his answers on cross. I have carefully examined his testimony and weighed his demeanor and the record in regard to each particular event.

As to Charles Wallace, I was impressed with his overall demeanor. I have cautiously examined his testimony and his pre-hearing affidavits and have decided to credit his testimony ex-

cept in those areas where the entire record convinced me that his testimony was incorrect.

Findings

Although it was difficult to determine whether Conerly or Wallace were more truthful, I am convinced that Wallace was the more believable in this instance. He recalled that David Greer was also present during the conversation. Additionally, although he first recalled that the conversation occurred at Mid-South Extrusion he corrected his testimony when he appeared to recall it was really at Dixie Bonded Warehouse. I credit Wallace and find that Conerly threatened that Robert Young's main goal was to shut down unions completely in Mississippi, Arkansas, and Monroe. I find that Conerly's statement was coercive. It implied that Young would take action to see that the Union would be eliminated and involved an unspecified threat of possible reprisal. I find the comment constituted a threat in violation of section 8(a)(1). *Southwest Distributing Co.*, 301 NLRB 954 (1991).

March 17, 1993

Marc Conerly: Threat: Told employees they were being more closely observed

After being on the job, Charles Wallace demonstrated to Respondent that he supported the Union. He worked a 1 day job in Alexandria on March 16, 1993. After returning from that job, Marc Conerly told him that an estimator for Wye had said that Robert Young wanted to send Wallace to Alabama, that he was going to give Wallace an ultimatum; that they were going to be watching Wallace and if he screwed up they were going to terminate him. Brian Smith was the estimator and supervisor that Marc Conerly reported to at that time.

Marc Conerly denied that Respondent ever told him to do anything regarding any employee because of the employee's union membership. He denied that he was told to observe any employee because of the employee's union membership and he denied the he ever threatened or was told to threaten any employee because of the employee's union membership.

Conerly admitted talking to Charles Wallace about Wallace's attendance. At one time Brian Smith or Joey Chambola wanted to fire Wallace because of his poor attendance. However, Conerly successfully argued for Wallace to be given another chance. Conerly denied that Wallace was considered for discharge or talked to about his attendance, because of Wallace's Union activities. Conerly testified that Wallace told him that he wanted to go to work at Respondent's job in Alabama.

There was considerable discussion regarding Wallace's attendance. Wallace's absences contributed to Respondent deciding to document disciplinary action with forms it started using on or shortly after March 16, 1993.

Conerly admitted that his supervisor, Brian Smith told him they were going to offer Wallace a job on the Montgomery, Alabama project and he hoped that Wallace would not take the job. Smith said that Robert Young had said that he hoped Wallace would decline the job. However, Conerly denied that was because of the Union. Instead it was because of their unhappiness with Wallace's work attendance.

Robert Young testified that he was asked first by Joey Chambola then by Marc Conerly, if Wallace could be fired because he was not coming to work. On both occasions Young replied that it was okay to discharge Wallace. Those conversations occurred before Respondent received a letter from the Union dated March 15, 1993, advising that Charles Wallace was a union member. However, when the decision was made to discharge Wallace, Wallace was not at work. Young did receive the Union's letter before Wallace was told of his discharge. Robert Young asked Chambola and Conerly about Wallace and they replied that was the man they planned to discharge. Young asked if Wallace's absences had been documented and was told they had not been. He phoned his attorney and, as a result, started using forms to document disciplinary action. Young instructed the supervisors not to discharge Charles Wallace.

Young denied that the letter from the Union had anything to do with Wallace's transfer to Alabama. He denied that he told anyone that he was hoping that Wallace would refuse the Alabama assignment so that he could be terminated.

Credibility

I have cautiously examined Charles Wallace's testimony and his prehearing affidavits and have decided to credit his testimony except in those areas where the entire record convinced me that his testimony was incorrect.

Marc Conerly was cautious in his answers on cross. I have carefully examined his testimony and weighed his demeanor and the record in regard to each particular event.

As shown above I credit the testimony of Robert Young in many respects. However, his testimony was suspect in some areas such as in regard to whether he ever considered union affiliation in selecting an employee for hire or discharge.

In light of the full record including especially Robert Young's admission that he received the union letter and decided to rescind the decision to discharge Charles Wallace, it is apparent that Respondent was well aware of Wallace's union affiliation at the time Marc Conerly told Wallace of Respondent's plan to offer him a job in Montgomery. In light of that context I am convinced that Marc Conerly was not being truthful when he testified that Respondent's hope that Wallace would turn down the Montgomery job was motivated solely because of Wallace's absentee record. Perhaps Wallace's work record was a consideration but in view of the Union's letter and its impact on Respondent's handling of Wallace, it is inconceivable that Respondent did not also consider Wallace's union activities in regard to getting him off the job. With that in mind I credit the testimony of Charles Wallace and do not credit conflicting testimony by Marc Conerly and Robert Young.

Findings

In view of the full record I am convinced that Charles Wallace was offered a job on the Montgomery, Alabama project and that Marc Conerly told him that Robert Young and Brian Smith would be happy if Wallace rejected that job. That conversation followed closely Respondent's receipt of a March 15, 1993 letter from the Union stating that Charles Wallace had signed an authorization card. Even if I was convinced that Conerly did not consider Wallace's union activities, I would be unable to find that Wallace could not have reasonably con-

strued Conerly's comment to refer to his union activities. I am convinced that Conerly did consider Wallace's Union activities. I find that he was referring to union activities and perhaps also to Wallace's absentee record, when he expressed that Respondent wanted to get rid of Wallace.

Conerly's comments in the context of Respondent just learning of Wallace's involvement with the Union, tend to coerce its employees and constitutes a violation of section 8(a)(1) of the Act. *Beverly Enterprises*, 310 NLRB 222 (1993); enf'd in part, denied in part 17 F.3d 580 (2d Cir. 1994); Decision Supplement 316 NLRB No. 134 (1995); *Montgomery Ward & Co.*, 288 NLRB 126 (1988); remand 904 F.2d 1156 (7th Cir. 1990); Supplement 307 NLRB 764 (1992); *Times Wire & Cable Co.*, 280 NLRB 19 (1986); *Benjamin Coal Co.*, 294 NLRB 572 (1989).

March 29, 1993

John Robertson: Interrogation: Threat of discharge:

Respondent admitted that Robertson was a supervisor during the time he was foreman on the Montgomery Alabama job. John Robertson testified that he did not have supervisory authority until after he went on the Montgomery job. He did have supervisory authority on that job.

After Charles Wallace started wearing union buttons and hats he worked on a project for Respondent in Montgomery Alabama.

John Robertson, David Greer, Chris Hodnett and Clint Turner also worked on the Montgomery job. Wallace and Greer roomed together. One day after work, Wallace, Greer, and Robertson were cooking on a grill. Wallace testified:

A. . . . we were just all sitting down drinking a cold beer after work. And John (Robertson) had seen the—my—I had some (Union) fliers sitting on my bed.

And he had seen—made a comment about this wasn't a union job. And I said I wasn't up there to cause no problems; I was just over there trying to do a job; I wasn't going to talk to him or anybody else about the union or anything like that. And he said that that was good because anything like that would result in immediate termination.

....

Q. Did he make any references to Mr. Young in this conversation?

A. That he was on a daily contact basis with him.

Q. About what?

A. My performance, my attitude.

....

A. He (John Robertson) said I did a good job. He seemed to be pleased. He made a remark one time in Alabama about me getting in a ditch and fixing a pipe that had busted, and he was pleased to see that I would get down in there and get dirty. He didn't expect it.

Q. Okay. Did he say why he didn't expect it?

A. Me being union.

Clint Turner was employed on the Montgomery job. Turner attended the barbecue at the hotel. He did not recall Robertson discussing the Union with Wallace. He admitted that he was outside the hotel room most of the time while Wallace and

Robertson spent more of the time in the room. Wallace did talk about the Union with Turner on four or five occasions.

John Robertson admitted being in the room with Wallace. He denied seeing union pamphlets but he admitted that Wallace was wearing a union hat or pin. Wallace told him that he had some union literature to pass out but Wallace told Robertson that he was not going to pass out the literature. Robertson denied entering into the conversation about the Union and he denied saying the Union would result in immediate termination. He denied threatening Wallace or any employee about the Union. He denied talking about the Union. He denied that Robert Young or anyone else with Respondent, asked him to report on Wallace's union activities.

Robertson recalled that Wallace said that he was a Union organizer and that after the campaign was over the Union was going to give him a ticket if he passed the examination. Robertson responded that he did not believe Wallace would ever get a ticket.

Credibility

I have cautiously examined the testimony of Charles Wallace including his prehearing affidavits and have decided to credit his testimony except in those areas where the entire record convinced me that his testimony was incorrect.

Clint Turner appeared to testify truthfully. However, his testimony illustrated that even though he was at a cook out with Robertson and Wallace, he may not have been in the room when the Union was discussed. Turner admitted that he was outside most of the time and the record shows that Robertson and Wallace were involved in a conversation in the hotel room.

As shown above I do not credit the testimony of John Robertson to the extent it conflicts with other evidence. Of the two, I find that Charles Wallace was more believable than Robertson.

Findings

The credited testimony of Charles Wallace shows that he was threatened by admitted supervisor John Robertson that this was not a union job and that he would be terminated if he talked about the Union. I find those comments constitute violations of section 8(a)(1) of the Act.

The section 8(a)(3) allegations

Respondent president, Robert Young, was from around 1966 until he resigned in approximately 1979, a member of IBEW, Local 446. He graduated from and had a continuing involvement in, the joint apprenticeship training committee program (JATC). He served on the JATC Board for NECA until around 1983. In 1978 the Local 446 business manager filed internal union charges against Young. He was found guilty and fined but the fine was overturned on appeal to the IBEW. He resigned following conclusion of those proceedings.

Since 1983 Respondent has not been signatory to contracts with IBEW or with any other union.

(a) *Between September 28 and November 1, 1992, Respondent refused to hire 25 employees:*

Respondent President Robert Young testified that when he needed to hire an employee he frequently phoned individuals

from his applications. Occasionally he noted his phone efforts on the particular application. Young testified from phone records that he phoned alleged discriminatees Divine, Silas, Nipper, and Larry Jones seeking employees. He also phoned a former alleged discriminatee in unfair labor practice charges named Albert Broadwater. Broadwater, originally an alleged discriminatee in this matter, was deleted by amendment to the Complaint.

Young testified that he sometimes would leave messages when the person he was phoning was not at home. However, on occasions when he needed an employee immediately he would often not leave a message. He testified that he phoned people that he knew were in the Union, seeking employees including Mike Fitzhugh. Fitzhugh had been an alleged discriminatee in a previous change. Young knew he was in the Union.

September 28, 1992

Woodroe Silas, a Local 480 member, applied for work with Respondent on the St. Dominic's Hospital job site on September 28, 1992. Silas testified that he was not working at that time. Silas went to Respondent's job with Wayne Divine, Robert Wilson, and Steve Barthel. Some wore IBEW tee shirts and IBEW badges. They talked with Harry Richardson.

Wayne Divine spoke for the group. He asked for applications. The four filled out applications and returned them to Richardson. At some point in the conversation, according to Silas, Richardson said that he had a lot of work. Divine is an assistant business manager, organizer with Local 480. Divine told Richardson they were Union and would organize the job but they would do that on their time. They would be good employees and do him a good job. Divine told Richardson they would try to organize before and after work and during lunch. Richardson said he would fax their applications to Monroe.

On October 13, Divine went back to the job and talked with Richardson. Richardson said the applications had been faxed to Monroe and that Divine would be contacted out of Monroe if anybody was going to be hiring. Divine has not been contacted since that time.

Woodroe Silas was not contacted until May 1993 when he received a phone call from Robert Young. Young asked him if he was still interested in going to work for Respondent. Silas replied that he was and Young arranged a meeting at Bennigan's Restaurant in Jackson, Mississippi. At that meeting Silas was hired by Respondent.

Robert Wilson and Steve Barthel have not been hired by Respondent.

Sammy Yelverton is an assistant business agent and organizer by Local 480. Yelverton applied alone after Silas, Divine, Wilson and Barthel. He did not identify himself as being affiliated with the Union. After completing his application Yelverton was interviewed by Harry Richardson. Yelverton asked Richardson how many people had applied for the job. Richardson told him that he was the eighth applicant. Richardson said that he had four applicants from the Union that morning and one of them was an assistant business manager. After talking about Yelverton's experience, Richardson said "I have to ask you this, are you a Union member?" Yelverton admitted that he had been a member. After more discussion about the job,

Richardson told Yelverton they would probably call him either September 30 or October 1. As shown above I find that Richardson's interrogation of Yelverton constitutes a violation of section 8(a)(1) of the Act.

Yelverton did not hear from Respondent. He returned to the job on October 8 and talked with Harry Richardson. Richardson said they were not hiring at that time.

Robert Young identified the September 28 application of Sammy Yelverton. He testified he does not recall considering Yelverton for employment. He admitted that he now knows that Yelverton is an IBEW business agent. He denied that he knew that in the fall, 1992. Young could not recall why Yelverton was not hired.

Project Manager Jim Cox testified that Harry Richardson would forward the applications for work on the Jackson project and Cox discussed those applications with Robert Young. He testified that those discussions did not include anything regarding the Union or whether the applicant was in the Union. Young did not ask him if any of those applicants was in the Union. Cox testified that union membership or sympathies did not play a role in the hiring of applicants for the Jackson job.

As shown above, Larry Nipper applied for work with Respondent on September 28, 1992, at Doctors Hospital in Jackson. He has been an electrician since starting the apprenticeship program in 1975. He is a member of Local 480 (Jackson, Mississippi). Nipper spoke with Harry Richardson when he applied for work. He knew Richardson from previous jobs. Richardson recognized Nipper. After Nipper completed his application he gave it to Richardson. Richardson told him that he would not need to go through the oral part of the application process because he knew Nipper was qualified. Richardson told Nipper that four union members had applied that morning. He asked Nipper why he was not wearing his union button. Richardson asked Nipper the name of the business agent that had applied that morning.

Respondent never contacted Nipper. Harry Richardson testified that Nipper was not hired because he did not believe Nipper could do the work.

Tim Harkins a member of Local 480 applied for work with Respondent at Doctors Hospital, Jackson, on September 28, 1992. He completed an application and gave it to Harry Richardson. Richardson asked about Harkins experience. Then he asked if Tim knew Buddy Harkins. Harkins responded that Buddy was his uncle. Richardson said that he had been foreman for Buddy. Harry Richardson asked Harkins if he was familiar with the Union. Harkins replied no. Richardson said that he had some union folks from the Hall come down.

Richardson told Harkins that he was going to fax his application to Monroe. Harkins did not hear from Respondent. On October 1, he returned to the Doctors Hospital job and spoke with Richardson. Richardson said that he had hired one man and was going to hire two more. He sent Harkins to another job site to talk with Mark Glascoe. Harkins went to that job and talked with Glascoe. Glascoe told Harkins that he would contact him that night or the next morning. Harkins has not heard anything from Respondent.

On cross examination Harkins admitted that he incorrectly listed dates for employers other than the dates he had actually

worked for those employers and he listed incorrect addresses for two of the three employers. He listed incorrect dates because he had worked for some union contractors at those times and he did not want to list union contractors on his application. The employers he listed were all nonunion contractors. Harkins testified that Wayne Divine at the union Hall told him to falsify his application. Divine testified in agreement with Harkins that he did advise some applicants to falsify their applications in order to hide union affiliation.

Robert Young testified that he could not locate applications for Tim Harkins, Michael Butler, Jackie Kuykendal, and Eric Sumrall. He agreed that General Counsel had subpoenaed records for all alleged discharges. Young testified that he did not recall considering Mr. Harkins for employment. He does not recall ever hearing the name Tim Harkins until charges were filed in these proceedings. Young does not recall ever having any of the above applications.

Other Applications

Respondent hired three other electricians that applied on September 28. Donald Edwards applied in Jackson, Mississippi. Edwards worked on the St. Dominic's project from October 2, 1992, until December 28, 1992. Gary Cauthen applied in Jackson. He was employed for one day at St. Dominic's on October 8, 1992. James Mathews Jr. applied on that date in Dodson, Louisiana. He worked at Willamette at Dodson from September 28, 1992, until January 27, 1993.

September 29, 1992

Larry Jones applied with Respondent at Doctor's Hospital in Jackson on September 29, 1992. He is a journeyman electrician and has been a member of Local 480 for 12 years. Harry Richardson gave Jones an application. After Jones completed the application he returned it to Richardson.

When he applied for work Jones was wearing a union organizer button about 3 inches in diameter. On his application he included past employers including two union contractors. He has heard nothing from Respondent since filing his application.

Robert Young identified two notations he made on the application of Larry Jones. The first was "I called 12/15/92. He was not home." The second was "I called 12/15/92 Woman answered she would not give out any information on when he would be home or availability for work 11:30 am." Young testified that he did not recall any conversation with a foreman where he discussed the application of Larry Jones. Young's telephone record for December 1992 shows that he completed one call to Jones' phone in Vidalia Louisiana on December 15, 1992 at 11:26 am.

Larry Jones' wife, Brenda Jones, testified that she does not recall receiving any phone calls from Respondent or Robert Young, regarding her husband going to work.

Wayne Divine at the Local, told Jones to put in an application with Respondent. His last employer in the trade before he applied with Respondent was Bechtel, a large union contractor. He recalled his wage level at Bechtel as \$15.86 per hour. Larry Jones understood that he was referred to Respondent under the Local's salting program and that he could have been taken off the job by the Local at any time.

Other Applications

John P. Cooley applied as electrician in Jackson, Mississippi on September 29. Cooley worked at St. Dominic's from September 30, 1992 until March 5, 1993.

October 2, 1992

Floyd Sandiford applied for electrical work with Respondent at their West Monroe, Louisiana office on October 2, 1992. Sandiford had been a member of IBEW Local 446 for 19 years. Sandiford was with Hugh Britt, Lynn Vestal, Ronnie Fontana, Mark Greer, and John Hopkins when he applied. All of them were wearing IBEW Organizing Committee buttons. Some were also wearing IBEW caps. John Hopkins and Hugh Britt spoke for the group. Sandiford had been called about applying with Respondent by either John Hopkins or Lonnie Shows. Both Hopkins and Shows were paid full-time Union organizers. Everyone in the group completed applications and left.

Robert Young testified that he made several attempts to contact Floyd Sandiford, II and that his inability to contact Sandiford was the only reason he did not offer Sandiford a job. The application notes one phone call to Sandiford but Young recalled that he made several. Sandiford did come by Young's office some time later but, Young testified, when Sandiford came by he was not hiring.

Sandiford learned that Robert Young phoned his house the Monday after he made application for work. Sandiford returned the call but Young had left his office. After that Sandiford phoned and went by Respondent's office.

John Hopkins was with Floyd Sandiford when Sandiford called Respondent after hearing that Robert Young had phoned Sandiford's home. Sandiford made several calls but did not talk with Robert Young.

Sandiford last went by the office and left his name and phone number on November 23. He was not contacted by Respondent. Finally in April 1993, Sandiford went by and talked with Robert Young. Andrew Sapp and Mark Greer were with Sandiford. Young told Sandiford that he knew Sandiford's father who was a member of IBEW Local 446.

Young told Sandiford that he had learned that the application used by Sandiford was of the wrong type and had been discarded. Sandiford asked about reapplying but Young said that he was not accepting applications at that time.

Sandiford agreed that he applied for work with Respondent under the Union's salting agreement. He was prepared to work for Respondent as long as there was work and the Union permitted him to continue to work for Respondent. He understood that he was expected to try and organize Respondent's employees. At the time of his application, Sandiford was working for U.S. Steam Service, a union contractor. His pay was \$13.50 per hour. Sandiford admitted from statements attached to his pre-hearing affidavit, that on the day he first applied for work with Respondent, John Hopkins told a man named "Joey" at Respondent, that the applicants were working on a boiler at U.S. Steam Service and that work would go into January or February.

Hugh Britt testified that he went through the Local 446 JATC program. He has been member of Local 446 for 14 years

and had worked as electrician, foreman, general foreman and electrical superintendent, when he applied on October 2

According to Britt, they asked Joey if they had any objection to hiring union members. Joey replied that he had never worked them before. That conversation was recorded. The recording showed that Joey Chambola said that he had no objection to working Union.

Respondent president Robert Young testified that he tried to call all the men that came in on October 2, except Hugh Britt. He did not try to hire Britt because of a secretary's notation on Britt's application that Britt smelled of alcohol.

Hugh Britt denied that he had been drinking alcohol before applying for work with Respondent. He denied having alcohol on his breath. Britt went back to Respondent's office twice but was unable to talk with Robert Young. Britt was well acquainted with Robert Young before he applied for work with Respondent.

Britt admitted that when he applied for work with Respondent, he was employed as a foreman at U.S. Steam and was earning \$16.95 an hour. He had heard that Respondent was paying around \$11 an hour. He testified that he would have accepted work with Respondent because his U.S. Steam job was almost completed. That job would have lasted about 6 months more. He admitted that one reason he applied was to help the Union organize Respondent.

Gaye Heckford, a secretary, recalled several men applying for work in October. They were wearing union buttons, union tee-shirts and things of that nature. Heckford testified that Hugh Britt did the talking for the group and she could smell alcohol on his breath. She wrote a comment "Smelled strongly of Alcohol" on Britt's application shortly after the group left Respondent's office.

Robert Young identified an October 2, 1992 application of Hugh Britt and a notation at the bottom of the application as being made by a secretary of Respondent, Gay Heckford. Her note reads, "10/2/92 Smelled strongly of alcohol." Young testified that Gay Heckford told him that Britt smelled of alcohol and for that reason, Britt was not considered for employment.

Mark Greer testified that he did not see Hugh Britt drinking alcohol on the morning of October 2, nor did he smell alcohol on Britt. Ronnie Fontana testified that he did not smell alcohol on Hugh Britt on October 2, 1992.

Ronnie Fontana has been an electrician for 22 years. He is a Local 446 member and went through their JATC program. Back in the early 1970's he worked for Robert Young at Trio Electric. He wore an IBEW tee shirt when he applied with the group on October 2.

Fontana was working at the time he applied with Respondent. He was making \$13.95 an hour and had heard Respondent was paying "\$8, \$10, something in that neighborhood. The Monday after he applied with Respondent, he was told that Robert Young had phoned while he was at work. Fontana returned Young's call but he has not been successful in talking with Young. He has not been offered work with Respondent.

On Fontana's application, Robert Young noted that he phoned and talked with Fontana's son who told him that Fontana was working in the paper mill in Bastrop. Young testified that the phone call was to offer Fontana a job. Young testi-

fied that whenever he learned someone was working, he did not pursue their application further. He did not presume that anyone would quit a job to go to work for Respondent.

Young testified that one phone call was noted on one copy of the application of Lyndon Vestal but he recalled making several unsuccessful calls to Vestal. A second copy of that application shows that Young made three unsuccessful calls to Vestal. He did not offer Vestal work because he was unable to reach him. Young explained that sometimes his secretaries make copies of applications and he may receive and write on more than one copy of a particular application.

Mark Greer a member of Local 446, applied for work with the October 2 group. All were wearing IBEW Organizing Committee buttons and some of them were wearing IBEW tee shirts. Mark Greer admitted that he was contacted by Local 446 about applying with Respondent. He was working at U.S. Steam Service at that time and he admitted that he would not have applied with Respondent if he had not been asked to do so by the Local. He continued to work at U.S. Steam until the end of March 1993. Greer admitted that he was not concerned with how much Respondent was paying. He understood that he was applying with Respondent under the union salting agreement.

Greer listed three union contractors as past employers on his application including U.S. Steam Service. After leaving his application Greer was told that Robert Young had phoned for him. Greer tried several times to contact Young by phone but was unsuccessful. On October 16, he returned to Respondent's office. A secretary confirmed that his application was on file but said Respondent was not hiring at that time.

On April 2, 1993, Greer returned to Respondent's office with Ronnie Fontana and Floyd Sandiford. They talked with Robert Young. Young told them they had some questions on the application forms that should not have been there and they had to throw those applications in the trash. The three asked for new applications but Young replied that he was not taking applications at that time.

Robert Young testified that he learned that Greer was working elsewhere. On cross he was questioned about an affidavit:

Q. In your Board affidavit of February 12, 1993, page 2, it states: "Mr. Greer's parents answered my call. I identified myself and why I was calling. Mr. Greer's parents gave me another number for their son which I then called but got no answer. Mr. Greer never returned my call." You would agree that you made no reference to the fact that the parents told you he was working?

A. Yes, sir.

John Hopkins is an assistant business manager and organizer with Local 446. He saw the ad for electricians in the Monroe newspaper in the fall, 1992. Thereafter he contacted several individuals and asked them to apply for work with Respondent. On October 2, 1992, Hopkins went to Respondent's office with Britt, Vestal, Fontana, Greer and Sandiford. Hopkins did not submit an application for work.

Hopkins admitted that he asked Chambola if he had any problem hiring union men. He agreed that a tape recording showed that Chambola said that he did not have any trouble working union people.

Chambola testified the men may have asked him a question about working union help but he did not recall his reply. He testified that he was not hiring on any of his projects at that time and he was not aware they were doing any hiring. He told the men they needed to talk to Robert Young because he, Chambola, knew nothing about the job advertised in the paper.

Robert Young testified that when he phoned the numbers given by Fontana, Greer, and Sandiford, he learned they were all working elsewhere. Normally he does not pursue an applicant when he learned the applicant was working and that was the practice he followed regarding Fontana, Greer, and Sandiford. He also phoned Lynn Vestal but received no answer at his number. The applications in file show that all except Fontana indicated on their application they were currently employed.

Charles Wallace applied with Respondent at their West Monroe office on October 2, 1992. At that time he was not in the Union. Subsequent to working for Respondent Wallace joined Local 446.

Wallace was interviewed by Joey Chambola. Chambola asked Wallace how he came to be in the area. Wallace told him that his fiancée was from the area. Wallace told Chambola that he had gone to Trio Electric looking for work and they had referred him to Respondent. Wallace testified that Chambola then "asked me if I was union, and I told him, No, Sir; I didn't know much about it." Wallace testified that Chambola offered him a job at \$10 an hour. His interview was on a Friday and he started work the following Monday. He continued working for Respondent until the following April.

When asked about hiring Charles Wallace, Joey Chambola testified that he believed Wallace came in later in the day. He hired Wallace but not any of the other men because he recalled all those men had jobs and Mr. Wallace was fresh in town and was looking for work. Chambola testified that he felt something happened after the group applied and before Charles Wallace applied that caused him to go from not needing to needing help but he does not recall what it was.

Robert Young testified that he was unaware that Charles Wallace was an IBEW member when Respondent hired Wallace in 1992. As shown above, Wallace was not actually an IBEW member at that time.

October 5, 1992

Other Applications

Charles Stevens applied as electrician with Respondent in West Monroe. Respondent employed him at Willamette, Dodson, Louisiana, from October 5, 1992, until April 14, 1993.

October 7, 1992

Michael Butler testified that he applied for work along with Jackie Kuykendal and Eric Sumrall. All three are from the Laurel, Mississippi area but they applied at Respondent's West Monroe office. They saw Joey Chambola:

We discussed the fact that we lived in the Laurel area and he said he could probably use us in the Monroe area, but it would be better for us to work in the Jackson area,

that they should have some openings over there, but he could use us locally.

....

At that point, we had told him that we normally worked Union jobs and he said okay, that he would give Mr. Young our applications and he would get back with us.

Butler has not heard from Respondent. Even though he called and left his number, no one called back.

Jackie Kuykendal recalled that he applied for work along with Butler and Sumrall around October 7, 1992. He admitted that he tape recorded the conversation with Joey Chambola. Kuykendal phoned Respondent's but he has not received a call from Respondent.

Sammy Yelverton drove Jackie Kuykendal, Mike Butler, and Eric Sumrall from Laurel, Mississippi, to Monroe Local 446. He did not accompany Kuykendal, Butler and Sumrall to Wye Electric.

Joey Chambola testified that he had a vague recollection of interviewing three men that drove over from Mississippi to apply for work. He does not recall whether the three actually filed applications. At that time he was aware that Respondent had a job in Jackson, Mississippi, but he did not know whether Respondent was actually hiring for that job. Chambola testified that he did not hire the three because they were not in a bind for help and the three were a long way from home. It was his experience that employees that drove a long way would quit when the job market improved near their home. However, on cross Chambola admitted that he hired Donald Phillips even though Phillips was from Alexandria that is about 100 miles away. On re-direct Chambola testified that Laurel is about 200 miles from Monroe.

Robert Young testified that he could not locate applications for Tim Harkins, Michael Butler, Jackie Kuykendal, and Eric Sumrall. He agreed that General Counsel had subpoenaed records for all alleged discharges. Young does not recall ever having any of the those applications. He did not recall discussing their applications with Chambola. He testified that as a general rule he would not hire someone from as far away as Laurel, Mississippi. It has been his experience that people from that far away will quit work when they find a job nearer their home.

October 7, 1992

Other Applications

Ronnie Campo applied as electrician in West Monroe. He worked at Shop Drivers- West Monroe from October 20, 1992, until August 6, 1993.

October 8, 1992

Robert Young noted on the October 8, 1992 application of Charles Jewell, "prefers to work for \$13.00." Jewell did not tell Young that he would not work for \$11.00. Young testified that Jewell may have told him that he wanted to organize Wye for the Union.

On the application of Joe Gallien, Young noted, "Will work for \$11 an hour, would like to work at Dodson." Gallien ap-

plied along with Charles Jewell and Richard Wynn. Young testified that he did not hire Gallien because he got the impression that Gallien did not want to work for \$11 an hour. Robert Young testified in a prehearing affidavit:

I also interviewed Gallien. He promptly volunteered he was a union member. I said we do not hire or fire based on union membership. I did not say I didn't recognize the union. I asked him what he wanted to make; he said union scale. I said, We are paying \$11 an hour. He said, Well, if that is what you are paying, I guess I will work for that.

Young testified that he did not recall that Richard Wynn mentioned the Union. On Wynn's application is the statement, "would work for \$11 an hour." Robert Young testified that he offered Wynn a job but that Wynn rejected his offer. Richard Wynn is not alleged as an illegal discriminatee.

When recalled in Respondent's case, Young testified that Richard Wynn, Charles Jewell, and Joe Gallien identified themselves as union members when they applied for work. Young offered Wynn a job even though he did not offer work to either Jewell or Gallien. Young did not offer work to Jewell or Gallien because he was under the impression both were reluctant to work for the wages offered by Respondent. Wynn rejected Young's first job offer. Later he was again offered a job and he accepted.

Robert Young testified that he believed Jerry Lambert was a union member, from the time that Lambert worked for him at Trio Electric. He understands that Lambert came in and filed an application but he did not learn that until an NLRB agent brought it to his attention. Lambert's application is dated October 8. Lambert's sister worked for Young.

Other Applications

Donald Phillips applied as electrician. Phillips was hired and he worked for Respondent from October 20, 1992 until November 10, 1992.

In addition to the above evidence, the credited testimony of Sammy Yelverton proved that when he talked with Harry Richardson on Respondent's St. Dominic's job in Jackson Mississippi, on October 8, Richardson told him that Respondent was not hiring at that time.

October 12, 1992

Robert Joel Hill applied with Respondent at Doctors Hospital on October 12, 1992. Harry Richardson told Hill he was hiring electricians. After filling out his application for employment, Hill could not find Richardson. He left the completed application on the windshield of Richardson's truck. Although Hill has been a member of Local 480 since 1979 he did not identify himself as a Union member to Richardson or on his application.

Harry Richardson phoned Hill at 7 am the following morning. Hill testified that he agreed to start work the next day at \$10 an hour. He continued to work for Respondent until January 6, 1993.

Robert Young does not think that he knew Robert Joel Hill was a member of IBEW when Hill was hired on October 14, 1992.

Other Applications

James and Chris Mathews, electricians, applied at Dodson. James Mathews worked at Willamette- Dodson from October 12, 1992, until January 13, 1993. Chris Mathews worked on the same job from October 12, 1992, until January 25, 1993.

October 13, 1992

Stacey Williams, a member of Local 480, applied for work with Respondent at Doctors Hospital on October 13, 1992. Williams spoke with Harry Richardson. Richardson asked him about his experience and how he got word about the job. Richardson asked him for references and asked if he was a Union electrician. Stacey Williams replied that he was not a Union electrician. Richardson hired Williams at that time without first checking with anyone. Williams testified that he tape recorded that conversation with Harry Richardson.

Harry Richardson testified that he never questioned an employee or an applicant about union activities, membership or sympathies. He specifically denied questioning Stacey Williams about the Union. Richardson testified that Williams asked him if Respondent was union and Richardson told him it was not. Richardson then looked at Williams' application and asked "Is Spence union?" Richard Spence was listed by Williams as a personal reference and as his last employer. Richardson admitted that he listened to a tape recording of his conversation with Stacey Williams before he testified in this hearing. Richardson testified that the tape recording had been altered and did not include Williams asking if Wye Electric was union.

Richardson testified that he did not have authority to hire employees while he worked with Respondent. However, he admitted that he did hire Stacey Williams. Williams gave him a sad story and he told Williams to come in and work the following Monday. In the meantime Richardson checked and got an okay to hire Williams. Richardson also hired Bobby Bunner before sending Bunner's application to Respondent's office.

The parties agreed that the actual tape recording included a comment by Richardson, "Is Richard Spence in the union?" The tape does not reflect that Richardson asked Williams if Williams was a union electrician. Williams listed Richard Spence on his application as a personal reference and as his last employer.

Robert Young does not recall that he knew Stacey Williams was an IBEW member when he was hired on October 19, 1992.

October 16, 1992

Other Applications

James Councilman, electrician, applied in West Monroe. He worked for Respondent from October 19, 1992 until June 14, 1994; then from October 3, 1994 until the present time.

October 19, 1992

Other Applications

Ricky Thomas, electrician, applied at Dodson, Louisiana. He was employed at Willamette-Dodson from October 19, 1992 until August 6, 1993.

October 21, 1992

As to alleged discriminatees Herbert Goudeau and Jerry Goudeau, Robert Young testified in his prehearing affidavit that they were not hired because he was not hiring at that time. He agreed that he did some hiring since October or November 1992. Herbert Goudeau indicated on his application that he had two years of JATC apprentice school in Alexandria, Louisiana. Jerry Goudeau wrote on his application, "I.B.E.W. App. School. Elec. 4 (years)."

October 25, 1992

Other Applications

Darvin Pierce, electrician, applied at West Monroe. He worked Willamette-Dodson from October 27, 1992, until August 6, 1993.

October 26, 1992

Other Applications

Charles Murphy, electrician, applied at Dodson. He worked at Willamette-Dodson from October 26, 1992, until January 3, 1993, and from May 3, 1993, until August 13, 1993.

Kyle Lee Gregg, electrician, applied at Bossier City, Louisiana. He worked for Respondent from October 26 until October 29, 1992.

October 29, 1992

Eddie Roberts testified that he has been an IBEW member for 25 or 26 years. He applied for employment with Respondent on October 29, 1992, at Doctor's Hospital in Jackson, Mississippi. Roberts spoke with Harry Richardson. Richardson told Roberts that he had worked for Roberts' father at one time. Roberts wore a white button with "IBEW, Local 480 I am a Union organizer" written on the button, during his interview with Harry Richardson. Richardson told Roberts that he would send his application to Monroe, Louisiana and, "if they needed me they would get in touch." Roberts has not heard from Respondent since making his application.

Roberts testified that he was told to apply with Respondent, by Wayne Divine from Local 480. Divine told him to wear the IBEW organizer badge. He admitted that he knew Respondent was a nonunion contractor. Eddie Roberts agreed that his application with Respondent was in accord with the Local's salting agreement with its members. Members are normally not permitted to work for nonunion contractors. However, when requested by the Local, members may work for a specific nonunion contractors with agreement to try and organize the job.

Eddie Roberts agreed that Mr. Divine told him that if he went to work for Respondent he would be expected to do whatever he was instructed to do to assist the Local organizing Respondent. He was told to report back to Divine if Respondent offered him a job.

Roberts agreed that when he asked Mr. Richardson if he needed electricians, Richardson replied no but he would let Roberts fill out an application.

October 30, 1992

E.T. Brister, a Local 446 member, applied for work at the West Monroe office on October 30, 1992. Lonnie Peters was

also present. Brister and Peters filled out applications and returned them to a secretary. Brister was a long term acquaintance of Robert Young. He also worked with Young in the apprenticeship program and he worked for Young at Trio Electric. Brister has heard nothing from Respondent since filing his application and he has not contacted anyone there. Brister admitted that he was working at U.S. Steam when he made his application with Respondent. He was making \$14.05 an hour. Brister testified that he would have accepted less to work for Respondent but he didn't "think I would have" accepted \$10 an hour. Brister admitted that he tape recorded the conversation with the secretary when he applied for work with Respondent.

As to alleged discriminatees E.T. Brister and Lonnie Peters, Robert Young admitted in his affidavit that they were not hired because he wasn't hiring at that time. He agreed that he did some hiring since October or November 1992.

Late October 1992

Steve Williams testified that he was a helper electrician in 1992. He was not a union member when he applied for work with Respondent in late October 1992 at the West Monroe office. However, he had gone through the JATC apprenticeship program and he put that on his application for employment with Respondent. He talked with Joey Chambola after completing his application form. Chambola told Williams that he could put him to work and Williams started the next day.

Joey Chambola testified that he hired Steve Williams as a helper. He did not know that Williams was a member of the Union. Chambola denied that he asked Williams about the Union.

November 11, 1992

Wilburn Williams was a member of Local 446 when he applied for work with Respondent at their West Monroe office on November 11, 1992. At that time he was employed by Lawrence Electric at \$14.50 an hour. Williams listed several union employers on his application for work including U.S. Steam, Lawrence Electric and Specter, Inc. When he turned in his application to Respondent's secretary he told her that he knew Robert Young and that Young would know who he was. The secretary told Williams he would be interviewed by Robert Young. Williams has heard nothing from Respondent. He phoned back a couple of months after leaving his application and was told Respondent was not hiring at that time. Williams testified that he would have accepted a job with Respondent even at \$10 or \$11 an hour because his job at that time was not going to last long.

Williams testified that he was not going to Respondent to work as a salt for the Union.

Robert Young testified that he knows Wilburn "Bubba" Williams from the apprenticeship program (JATC). He believes that Williams went through the apprenticeship program while Young was affiliated with that program.

As to alleged discriminatee Wilburn Williams, 1992 Robert Young admitted in his affidavit that Williams was not hired because he wasn't hiring at that time. He agreed that he did some hiring since October or November 1992.

November 18, 1992

Other Applications

Brian Kittinger, electrician, applied at Pineville, Louisiana on December 9, 1992. According to Respondent's records he actually worked for Respondent at International Paper, Pineville from November 18, 1992, until February 26, 1993, and from June 22, 1993, until December 16, 1993.

December 1, 1992

Other Applications

Robert Bunner, electrician, applied at Jackson, Mississippi. Bunner worked at St. Dominic's from December 3, 1992 until March 5, 1993 and from April 12, 1993 until June 2, 1993.

December 9, 1992

Other Applications

As shown above, Brian Kittinger applied at Pineville, Louisiana on December 9, 1992. According to Respondent's records he actually worked for them at International Paper, Pineville from November 18, 1992 until February 26, 1993 and from June 22, 1993 until December 16, 1993. (See above under November 18, 1992.)

May 1993

In May 1993 Woodroe Silas met with Jim Cox and Mark Glascoe at Bennigan's. He was accompanied by Wayne Divine and Sammy Yelverton. Cox told Silas that he was authorized to pay for Silas' lunch but he would not pay for Divine and Yelverton. At Cox' request Silas filled out another application. Silas accepted a job with Respondent at St. Dominic's Hospital. After two weeks on that job Silas accepted a union referral and quit the job with Respondent.

Sammy Yelverton testified that he and Wayne Divine went with Woodroe Silas to Bennigan's. They met with Mark Glascoe and Jim Cox. Yelverton and Divine asked to put in applications. Cox said that he only had one application and he was only authorized to hire Woodroe Silas. Divine also testified regarding the Bennigan's meeting.

Credibility

In all credibility determinations I have considered the demeanor of the witness as well as the full record and rebuttal and corroborating evidence.

E.T. Brister's testimony was unremarkable. He appeared to answer truthfully to questions under both direct and cross.

The testimony of Hugh Britt was generally unremarkable. I am bothered by Britt's testimony regarding his willingness to quit his job at U.S. Steam to begin work immediately with Respondent. His testimony that he would quit his job if offered work by Respondent because the U.S. Steam job was about to run out was compromised by his subsequent testimony that the job was to last another 6 months. I am convinced that Britt was not completely candid regarding that testimony. In view of that finding I am reluctant to credit Britt's testimony to the extent it conflicts with credited evidence.

Michael Butler appeared to testify truthfully in most of his testimony. However, when first called he did not include in his testimony the fact that Sammy Yelverton had accompanied him

to Monroe to apply for work with Respondent. Even though he eventually admitted that Yelverton was along on that trip, I continue to be bothered by his original testimony. I am reluctant to credit his disputed testimony without corroboration.

I am troubled about portions of Joey Chambola's testimony. His testimony regarding several applicants that applied on October 2, 1992, was not consistent. Chambola testified that several men that applied that morning, may have asked him about working Union help but he did not recall his reply. He testified that he was not hiring on any of his projects at that time and he was not aware they were doing any hiring. As shown below, that testimony was shown to be untrue because Chambola hired Charles Wallace later that same day. Chambola told the men they needed to talk to Robert Young because he, Chambola, knew nothing about the job advertised in the paper. When asked about hiring Charles Wallace later that same day, Joey Chambola testified that he hired Wallace but not any of the other men because he recalled all those men had jobs and Mr. Wallace was fresh in town and was looking for work.

That testimony is inconsistent with that of Robert Young. Young testified that he phoned all the applicants from the morning of October 2, except Hugh Britt. However, Young also testified that he did not pursue applicants if he knew they were already working. That testimony tends to show that Chambola did not tell Young the applicants from the morning of October 2, were all working. In fact one of the applicants, Ronnie Fontana, indicated on his application that he was not currently employed. In view of that inconsistency, I question Chambola's testimony that he did not hire those applicants as opposed to Charles Wallace, because those applicants were working. Chambola also testified that he could not recall why he did not hire those applicants in view of his hiring Charles Wallace later that same day.

Chambola testified that he felt something happened after the group applied and before Charles Wallace applied that caused him to go from not needing to needing help but he does not recall what it was. Additionally he testified that he did not hire applicants from Laurel, Mississippi. They were 100 miles away. He was unable to account as to why he hired applicants from Alexandria and Shreveport, Louisiana, even though those applicants lived 100 miles away. Later, in his testimony, Chambola was asked about the distance to Laurel and he testified that was actually 200 miles from Monroe. I have examined Chambola's disputed testimony and have credited only those portions which impressed me as truthful in view of the entire record.

Jim Cox appeared to have some difficulty in recalling events in late 1992. I have considered his testimony in light of its context and whether disputed by other evidence. I do not credit his testimony to the extent it conflicts with credited evidence.

Wayne Divine appeared to testify truthfully under cross and direct examination. I credit his testimony.

I found Ronnie Fontana to be credible. His testimony generally agreed with that of Robert Young regarding Young phoning Fontana's home and learning that Fontana was working at the Bastrop paper mill.

Mark Glascoe appeared to testify truthfully. I observed nothing that caused me to doubt his truthfulness. I credit his testimony.

Mark Greer appeared to respond truthfully on both cross and direct. I saw nothing that caused me to doubt his testimony.

Tim Harkins admitted that he falsified his application with Respondent. He did not list union employers and changed the dates he had actually worked for nonunion employers that he listed on his application. He did that at the Union's direction in order to hide the fact that he was affiliated with the Union. Despite those admissions I found Harkins to be fully responsive on both cross and direct. I was impressed with his demeanor and I credit his testimony.

Gayle Heckford appeared to testify truthfully. Her demeanor was good. There was nothing that caused me to question her truthfulness.

I credit the testimony of Robert Joel Hill that he did not reveal his union affiliation when he applied for work with Respondent. Hill appeared to testify truthfully. I credit his testimony regarding the phone call he overheard by Harry Richardson and his conversations with Richardson and James Cox regarding the possible layoff of Stacey Williams.

John Hopkins appeared to testify truthfully. He admitted that he asked Mark Conerly for information from Respondent including dates of hire and application dates. He denied that he asked Conerly to perjure himself in order to assist the Union. I found no reason to suspect that Hopkins was untruthful. I credit his testimony.

Larry and Brenda Jones appeared to testify truthfully. However, I am unable to credit the testimony of Larry and Brenda Jones to the effect they have not been phoned by Respondent. Robert Young's phone records proved that he did make a call to their home. I do credit Larry Jones testimony that he wore a union button when he was interviewed by Richardson.

Jackie Kuykendal appeared to testify truthfully. There was some confusion in his affidavit testimony regarding his trip to Monroe to apply for work with Respondent. Nevertheless, his testimony appeared to square with credited evidence and I was convinced that he tried to testify truthfully.

Larry Nipper appeared to give candid testimony. He was not evasive and seemed to response fully on both cross and direct. I credit his testimony.

I found Harry Richardson was less than credible. I do not credit his testimony to the extent it conflicts with other evidence. He denied telling Project Manager Jim Cox that Stacey Williams was wearing a union button even though Cox recalled that Richardson did tell him that Williams was wearing a union button. Both Cox and Richardson testified for Respondent.

I found Eddie Roberts to be a candid witness. He appeared to truthfully respond to questions regarding union control over his work. I credit his testimony.

Floyd Sandiford appeared to testify truthfully. I credit his testimony.

I find that Woodroe Silas was a candid witness. He testified at length on both direct and cross. I credit his testimony.

Charles Wallace admitted that he falsified his job application with Respondent because of an unstable work history. He testified without evasion and admitted falsifying his application. I

found that he appeared to testify candidly on both cross and direct. Despite the falsification of his application, I was impressed with his overall demeanor. I have cautiously examined his testimony and his prehearing affidavits and have decided to credit his testimony except in those areas where I was convinced that his testimony was incorrect.

As shown above, Stacey Williams did not impress me as a credible witness as to his complete testimony. His testimony conflicted with a tape recording made by him of a conversation with Harry Richardson. I credit the evidence contained in the tape recording.

Steve Williams testified without evasion. He appeared to respond fully on both cross and direct. His testimony regarding the alleged supervisory authority of John Robertson, was contrary to the position of General Counsel. I was impressed with his demeanor and I credit his testimony.

I found Wilburn Williams to be a reliable witness and I credit his testimony.

Sammy Yelverton appeared to testify truthfully under both cross and direct examination. He was not evasive and answered without hesitation even though some of the answers appeared harmful to the union position. He admitted that covert job applicants are sometimes instructed to give false resume information. I credit the testimony of Sammy Yelverton.

I was bothered by some of Robert Young's testimony. His testimony was sometimes inconsistent with other witnesses for Respondent and there were inconsistencies inherent in his own testimony. For example he testified that he normally did not pursue applicants that were already working. However, despite testimony from Joey Chambola that Chambola knew several applicants on October 2, were all working and despite the fact that several of those applicants noted on their applications they were currently employed, Young testified that he phoned all but one. I have examined Young's disputed testimony with caution and have discredited him when I was convinced his testimony was not truthful.

FINDINGS

General Counsel alleged that Respondent refused to hire 25 job applicants between September 28 and November 1, 1992 because of the Union. In that regard there is disagreement among United States Circuit Courts of Appeal regarding the status of union organizers that apply for work. That issue is pending consideration by the United States Supreme Court. In that regard and in light of current Board law, I shall consider that all the applicants herein are employees. See *Town & Country Elec., Inc. v. NLRB*, 34 F. 3d 625, 147 LRRM (BNA) 2133; cert. Granted 115 S.Ct. 933, 130 L. Ed. 2d 879 (1/23/95); *Town & Country Electric, Inc.*, 309 NLRB 1250 (1993); *Waco, Inc.*, 316 NLRB No. 9 (1995); *Fluor Daniel, Inc.*, 311 NLRB 498 (1993); *Casey Elec., Inc.*, 313 NLRB 774 (1994); *AJS Electric*, 310 NLRB 121 (1993).

As to the question of whether a union organizer is an employee, the record does show that two paid union organizers were among the 25 alleged discriminatees in this case. Wayne Divine and Sammy Yelverton are assistant business managers of Local 480.

Several other applicants were not shown to be employees of the Union and were not shown to otherwise receive pay from the Union. However, they identified themselves as Union organizers by wearing union organizer buttons or by telling an agent of Respondent they would organize the job. Woodroe Silas, Robert Wilson, and Steve Barthel were with Wayne Divine and Divine told Harry Richardson they were Union and would organize the job. Larry Jones wore a union organizer button when he applied and talked with Harry Richardson on September 29. Floyd Sandiford, Hugh Britt, Lynn Vestal, Ronnie Fontana, and Mark Greer were wearing IBEW Organizing Committee buttons when they applied while with Assistant Business Manager John Hopkins on October 2. Robert Young testified that Charles Jewell may have told him that he wanted to organize Wye for the Union when Jewell applied on October 8. Eddie Roberts wore a white IBEW Local 480 button that also stated "I am a Union organizer," when he applied and talked with Harry Richardson on October 29.

Respondent argued that the alleged discriminatees were not bona fide applicants because they advertised themselves as Union organizers and several of them were employed elsewhere at the time of their applications. Respondent argued that in the group of employees that applied at West Monroe on October 2, Hugh Britt was a foreman for U.S. Steam making \$16.95 per hour; Floyd Sandiford was making in excess of \$13.00 per hour for U.S. Steam; Ronnie Fontana was making nearly \$14.00 per hour with U.S. Steam; and Mark Greer was making nearly \$14.00 per hour with U.S. Steam. All indicated they were willing to accept pay of \$10 per hour with Respondent under the Union's salting program.

I do not agree that the evidence herein supports language similar to that cited by Respondent from the administrative law judge in *Bay Control Services, Inc.*, 315 NLRB 30 (1994). The ALJ felt the record showed that the Union used its salting program to lay traps for the employer. That matter was not litigated in this hearing.

In *Bay Control Services* the Board failed to adopt the administrative law judge regarding the Union's motivation in a salting campaign. The Board held:

. . . Members Stephens and Devaney do not rely on the judge's speculative comments that the union members who applied for work were not bona fide job applicants, his finding that these applicants placed an unacceptable condition on BCS by requiring that they be promoted from helper to journeyman status as soon as possible, or his reference to and reliance on *Ultrasystems Western Constructors v. NLRB*, 18 F.3d 251 (4th Cr. 1994). *Bay Control Services*, 315 NLRB 30, fn. 2 (1994).

The record illustrated that many of the alleged discriminatees did apply for work under the Union's salting program. Some of those applicants were paid union organizers. Others held themselves out to Respondent to be Union organizers even though they were neither paid union employees nor volunteers that received some money from the Union. The issue of whether those applicants were employees may be considered by the U.S. Supreme Court in *Town & Country*. I find that the fact that those applicants were sent to Respondent by the Union does not

show that those applicants were acting in bad faith by applying for work with Respondent. Even though many were shown to have applied solely because they were instructed to do so by the Union, I find that the record does not support Respondent's contention to the extent it would tend to imply that those applicants planned to perform less than satisfactory work for Respondent. The record does not support such a finding. Several of the applicants responded to Respondent's queries to the effect they would leave work with Respondent if directed to do so by the Union. When asked by the Union, those applicants agreed they would leave any job, including a union contractor job, if directed to do so by the Union. I find that evidence does not support a finding that the applicants were not *bona fide*.

As to whether Respondent illegally refused to employ some or all of the alleged discriminatees, I shall first consider whether General Counsel proved *prima facie* that one of the reasons why Respondent refused to hire any of the alleged discriminatees was union activity. If I find in support of General Counsel then I shall consider whether Respondent proved that it would have refused to hire the alleged discriminatees in the absence of his Union activities. *Wright Line*, 251 NLRB 1083 (1980), *enfd* 662 F.2d 899 (1st Cir. 1981), *Cert. denied*, 455 U.S. 989, 102 S. Ct. 1612, 71 L. Ed. 2d 848 (1982); *N.L.R.B. v. Transportation Mgmt. Corp.*, 462 U.S. 393, 113 LRRM 2857 (1983).

See also *J.E. Merit Constructors*, 302 NLRB 301, 303-304 (1991) where in a refusal to hire allegation the test applied included a requirement that General Counsel prove (1) the applications were filed during hiring stages, (2) the Respondent knew of their source, (3) it harbored union animus, and (4) it acted on that animus in failing to hire any from this group. Here, the evidence established that the alleged discriminatees did apply during hiring stages at times when Respondent was advertising for electricians in local newspapers and was actually hiring as shown herein. The issues of knowledge, animus and actual motivation are dealt with below.

The record illustrated that Respondent advertised in local newspapers and continued to hire electricians from September 28, 1992. As shown above two applicants that applied at Jackson, Mississippi, on September 28 were hired. Donald Edwards and Gary Cauthen were both hired at St. Dominic's Hospital. James Mathews, Jr. applied with Respondent in Dodson, Louisiana and was hired that same day, September 28, 1992.

On September 29, John P. Cooley applied in Jackson. He was employed at St. Dominic's from September 30. Charles Stevens applied in West Monroe on October 5, and was employed on that date. Ronnie Campo applied at West Monroe on October 7. He was employed from October 20, 1992.

Richard Wynn was offered a job after he applied on October 8. Wynn rejected that offer. Donald Phillips also applied. Phillips was employed from October 20, 1992. James Mathews and Chris Mathews applied at Dodson, Louisiana on October 12. Both James and Chris Mathews were employed at Willamette-Dodson from October 12, 1992.

Stacey Williams was employed after he applied at Jackson on October 13, 1992. James Councilman applied on October 16 at West Monroe and was employed from October 19, 1992. On

October 19, Ricky Thomas applied at Dodson. He was employed from October 19, 1992.

Darvin Pierce applied at West Monroe on October 25 and was employed from October 27, 1992. On October 26, Charles Murphy and Kyle Lee Gregg applied at Dodson and Bossier City, Louisiana. They were employed from October 26, 1992. Steve Williams was employed in late October after he applied for a helper position.

On December 1, Robert Bunner applied in Jackson, Mississippi. Bunner was employed from December 3, 1992. On December 9 Brian Kittinger applied in Pineville, Louisiana. He was employed at International Paper.

The above evidence proved there were jobs available at one or more of Respondent's job locations at times after the alleged discriminatees applied for employment.

In consideration of whether General Counsel proved that Respondent was motivated to refuse to hire the alleged discriminatees because of union activity, the Board has held:

... in order to establish a prima facie violation of Section 8(a)(1) and (3) of the Act, the General Counsel must establish (1) that the alleged discriminatees engaged in union activities; (2) that the employer had knowledge of such; (3) that the employer's actions were motivated by union animus; and (4) that the discharges had the effect of encouraging or discouraging membership in a labor organization. *Electromedics, Inc.*, 299 NLRB 928, 937, affirmed 947 F.2d 953 (10th Cir. 1991).

(1) Evidence of union activity and Respondent's knowledge:

The credited evidence illustrated that alleged discriminatees engaged in union activity and Respondent knew of that activity.

The credit evidence proved that when Woodroe Silas, Wayne Divine, Robert Wilson, and Steve Barthel applied for work in Jackson on September 28, they wore IBEW tee shirts and badges. Of that group only Wayne Divine was a paid Union employee. Divine told supervisor Harry Richardson that the four of them were Union and would organize the job. That evidence convinced me that Respondent was aware that Silas, Divine, Wilson, and Barthel were known union organizers at the time of their applications.

Although Sammy Yelverton did not immediately identify himself as Union when he applied on September 28, the credited evidence showed that Yelverton responded to Harry Richardson's question to the effect that he had been a member of the Union. The record failed to establish that Respondent knew Yelverton was a paid union organizer at the time of his application. However, it does show that Respondent was aware that Yelverton had been in the Union.

The credited evidence proved that Harry Richardson knew Larry Nipper to be a union member when Nipper applied on September 28.

Larry Jones was wearing a union organizer button when he applied and was interviewed by Harry Richardson on September 29, 1992. Jones listed two union contractors on his application. I find from that evidence that Respondent was aware that Jones was a union organizer from the time of his application for work.

Floyd Sandiford, Hugh Britt, Lynn Vestal, Ronnie Fontana, Mark Greer, and John Hopkins were wearing IBEW Organizing Committee buttons. Some of them were also wearing IBEW caps, when Sandiford, Britt, Vestal, Fontana, and Greer applied for work on October 2 in West Monroe. Hopkins was a paid Union organizer. Britt and Hopkins spoke for the group. Hopkins asked Joey Chambola if he objected to hiring union members. Chambola replied that he had never worked union people and he did not have any trouble working union people. I find that Respondent was aware that Sandiford, Britt, Vestal, Fontana, and Greer were union organizers from the time of their application.

Michael Butler, Jackie Kuykendal, and Eric Sumrall applied for work in West Monroe on October 7. The credited evidence shows they told Joey Chambola they usually worked union jobs. I find that Respondent knew that Butler, Kuykendal, and Sumrall were affiliated with the Union.

The credited evidence showed that Robert Young recalled that Charles Jewell may have told him that he wanted to organize for the Union and that Joe Gallien did tell Young that he was a union member when Jewell, Gallien, and Richard Wynn all applied for work in West Monroe on October 8. In view of that testimony I find that the record shows that Respondent knew that Jewell was a union organizer and that Gallien was a union member at the time of their application.

Robert Young testified that he believed Jerry Lambert was a union member, from the time that Lambert worked for him at Trio Electric. Lambert is the brother of a woman Young has employed in his home. Lambert's application contained in Respondent's records is dated October 8. I find that Lambert was known to be a union member from the time of his application.

Herbert Goudeau and Jerry Goudeau applied on October 21, 1992. Herbert Goudeau indicated on his application that he had two years of JATC apprentice school in Alexandria, Louisiana. Jerry Goudeau wrote on his application "I.B.E.W. App. School. Elec. 4 (years)." That evidence proved that Respondent had reason to believe that Herbert and Jerry Goudeau had been affiliated with the Union during the past.

Eddie Roberts applied for employment with Respondent on October 29, 1992, at Doctor's Hospital in Jackson. Roberts spoke with Harry Richardson. Richardson told Roberts that he had worked for Roberts' father at one time. Roberts wore a white button with "IBEW, Local 480 I am a Union organizer" written on the button. I find that Respondent knew that Roberts was a union organizer at the time of his application.

E.T. Brister, a Local 446 member, applied for work at the West Monroe office on October 30, 1992. Lonnie Peters was also present. Brister and Peters filled out applications and returned them to a secretary. Brister was a long time acquaintance of Robert Young. He also had contact with Young in the apprenticeship program and he had worked for Young at Trio Electric. Brister told the secretary that he was acquainted with Young. I find that the credited record shows that Respondent knew of Brister's affiliation with the Union.

Wilburn Williams was a member of Local 446 when he applied for work with Respondent at their West Monroe office on November 11, 1992. Williams listed several union employers on his application for work including U.S. Steam, Lawrence

Electric and Specter, Inc. When he turned in his application to Respondent's secretary he told her that he knew Robert Young and that Young would know who he was. The secretary told Williams he would have to be interviewed by Robert Young. Robert Young testified that he knows Wilburn "Bubba" Williams from the apprenticeship program (JATC). I find the record established that Respondent knew of Williams' affiliation with the Union.

I find that the evidence proves that the following applicants engaged in union activity and that Respondent was aware of their union activities at the time of their applications for employment:

Steve Barthel	E.T. Brister	Hugh Britt
Michael Butler	Wayne Divine	Ronnie Fontana
Joe Gallien	Herbert Goudeau	Jerry Goudeau
Mark Greer	Charles Jewell	Larry Jones
Jackie Kuykendal	Jerry Lambert	Larry Nipper
Eddie Roberts	Floyd Sandiford	Woodroe Silas
Eric Sumrall	Lynn Vestal	Wilburn Williams
Robert Wilson	Sammy Yelverton	

The credited testimony of Tim Harkins failed to prove that Respondent was aware that Harkins was affiliated with or supported the Union. Harry Richardson asked Harkins if he knew Buddy Harkins. Harkins replied that Buddy was his uncle. Richardson asked Harkins if he was familiar with the Union and Harkins replied no. Harkins falsified portions of his job application. However, there was no showing that Respondent learned that Harkins was affiliated with or supported the Union.

As to Lonnie Peters, there is insufficient evidence of knowledge. Peters came into the West Monroe office and applied along with E.T. Brister. The only evidence showing knowledge, was that Brister told the secretary that he was acquainted with Robert Young. There was no showing that a supervisor or agent was told anything which connected Peters to the Union. I find based on that evidence, that General Counsel failed to prove that Respondent knew of Lonnie Peters engaging in Union activity. General Counsel pointed to minutes of JATC during times when Robert Young was present to show knowledge of Peters' union affiliation. Peters did appear before that committee with Robert Young present during meetings on February 10 and November 3, 1981. However, there was no showing that Peters' application was mentioned to Robert Young or that he learned anything which would cause Young to connect Peters' application with the 1981 committee meetings. I find that the evidence failed to adequately support General Counsel's contention that Respondent knew of Lonnie Peters' affiliation with the Union at the time of his application.

(2) Evidence of union animus and that the discharges had the effect of encouraging or discouraging union membership:

Respondent, through its supervisors and agents, Joey Chambola, Harry Richardson, John Robertson, Marc Conerly, and James Cox engaged in conduct in violation of section 8(a)(1) by interrogating job applicants, by threatening employees with layoff, by threatening employees that Respondent's president had a goal of shutting down unions, and by threatening employees that it was assigning an employee to an out of state job

in the hope that employee would reject the assignment because that employee supported the Union.

Additionally the full record including incidents shown above demonstrated Respondent's animus. For example on October 2, after he had told overt union supporters and organizers that President Robert Young did all the hiring, Supervisor Joey Chambola hired Charles Wallace. Wallace told Chambola that he was not Union and did not know much about the Union. Moreover, the record showed that during the 1989 Union organizing campaign in Jackson, Respondent published notices to employees in opposition to the Union.

I find that and the full record illustrates animus against the Union. I find that by refusing to consider for employment, employees shown to support the Union, Respondent engaged in activity that by its very nature, tended to discourage employees from union membership.

I find that General Counsel made a prima facie case that Respondent refused to hire any of the 23 alleged discriminatees (excluding only Tim Harkins and Lonnie Peters from all alleged discriminatee). *Fluor Daniel, Inc.*, 311 NLRB 498, 500 (1993).

Respondent contends that it would have failed to employ the alleged discriminatees in the absence of their union activities. In that regard, I shall consider whether the evidence supports Respondent in that regard. See *Wright Line*, 251 NLRB 1083 (1980), enf'd 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989, 102 S. Ct. 1612, 71 L. Ed. 2d 848 (1982); *N.L.R.B. v. Transportation Mgmt. Corp.*, 462 U.S. 393, 113 LRRM 2857 (1983); *Northport Health Services, Inc. v. NLRB*, 961 F.2d 1547 (11th Cir. 1992).

Robert Young testified that he attempted to phone several of the alleged discriminatees to either offer work or to discuss that possibility. In several of those instances Young learned that the applicant was currently employed. Young testified that it was his policy to not follow up on an applicant that was currently employed. As to alleged discriminatees that Young tried to reach by phone but was unsuccessful and as to those that Young learned were employed, Young testified that those people were not hired because either Young could not reach them by phone or because of Respondent's policy to not to continue to pursue applicants that were already employed.

Young testified from phone records that he phoned Wayne Divine, Woodroe Silas, Larry Nipper, and Larry Jones. Young testified that he left a message on Woodroe Silas' answering machine and he believed he left a message on Larry Nipper's machine. However, he testified, that when he was in a hurry to hire someone he may not leave a message. Instead when he did not receive an answer he would go on to the next applicant on the list.

As Young testified his telephone record does show that he phoned Wayne Divine on December 15, 1992. The record shows that Young phoned number 601/371-7610. Respondent contends that evidence illustrated that Respondent would have hired Divine but for Young's inability to reach Divine by phone. However, I note on Divine's application that he listed two phone numbers, 601 373-7610 or 373-8434. Divine also completed his application showing his current employer as IBEW Local 480 in Jackson. There was no evidence from the

record testimony or Young's phone record, showing that Young phoned Divine's second phone listing or that Young tried to reach Divine at the Local 480 office. In view of the indication on his application that Divine could be reached at one of two phone numbers, I find that Young failed to show that he made a conscientious effort to contact Divine. Young did not prove that he failed to employ Divine solely because he could not reach Divine by phone.

As to Woodroe Silas, Young's notation on Silas' application shows that he phoned Silas on October 4 Sunday 1:30 pm; 10/5 8:30 am; and 12/15 9 am. Young's December phone record shows that Young phoned Silas' number on October 5 at 8:36 am and December 15 at 8:55 am. Young testified that he left a message on Silas' answering machine. Silas denied that such a message was left on his machine.

Woodroe Silas testified that neither him nor his wife received a phone call from Respondent until 1993 and there were no messages left on his answering machine. It is not disputed that Silas was contacted in May 1993 when he received a phone call from Robert Young. Young asked him if he was still interested in going to work for Respondent. Silas replied that he was and Young arranged a meeting at Bennigan's Restaurant in Jackson, Mississippi. At that meeting, that is discussed below, Silas was hired by Respondent.

As shown herein, I find that Silas was generally truthful. However, Young's phone record established that Young did connect with Silas' phone on October 5 and December 15, 1992. I cannot credit Silas' denial in view of the phone records.

I find, contrary to Silas, that Young credibly testified that he did leave a message on Silas' machine. In view of that evidence and my credibility findings, I am convinced that Young made a good faith effort to hire Woodroe Silas in October and December 1992. As shown above Respondent did hire Silas in 1993.

Robert Young testified from the application of Robert Wilson that he phoned the number listed on Wilson's application in an effort to hire someone for a small project being handled by Mark Glascoe on December 15, 1992. His notation shows that he learned the number listed on Wilson's application had been disconnected. Wilson's application is dated September 28, 1992. Young's testimony was not rebutted. I find that Young made a good faith effort to hire Wilson on December 15, 1992.

Larry Jones' application includes the notations "I called 12/15/92 He was not home," and "I called 12/15/92 woman answered she would not give out any information on when he would be home or availability for work 11:30 am." Phone records show that one call was completed to Jones' number in Vidalia, Louisiana at 11:26 am on December 15, 1992. In view of the phone records and the direct conflict between Young's testimony and the impression from the contrary testimony of Mrs. Jones that Young did not talk to a woman at Jones' house on December 15, I am unable to discredit Young's testimony in that regard. I am convinced that he did phone Jones on that date and ask about Jones' availability for work.

Larry Nipper's application contains the notation by Robert Young, "I called 10/15/92 9:17 am not at home got a recording." Nipper testified there was no message left on his answering machine.

Nipper admitted that after waiting a week or a week and a half to hear from Respondent after his application, he left the area to accept a job in Denver. He testified that he was probably in Denver on October 15, 1992. Nipper testified that he continued to check back with his family and he was not told of any phone messages from Respondent.

Despite the evidence that Young tried to phone Nipper, Harry Richardson testified that Nipper was not hired because he did not believe Nipper could do the work.

In view of Richardson's testimony, I am unable to credit Young's testimony to the extent it would show that Nipper would have been hired but for Young's inability to contact him.

Young testified that he also phoned Ronnie Fontana, Mark Greer, Floyd Sandiford, and Lynn Vestal after they applied along with Hugh Britt. He did not phone Britt because there was a notation on Britt's file that he smelled of alcohol. He was informed during those calls that Fontana, Greer, and Sandiford were already working. Young testified that it was his policy to not pursue any applicant that was already working and for that reason, he did not continue to pursue the applications of Fontana, Greer, and Sandiford.

Gaye Heckford, a secretary, recalled several men applying for work in October. They were wearing union buttons, union tee-shirts and things of that nature. Heckford testified that Hugh Britt did the talking for the group and she could smell alcohol on his breath. She wrote a comment "Smelled strongly of Alcohol" on Britt's application shortly after the group left Respondent's office. Robert Young testified that he did not hire Britt because of that notation on Britt's application.

Despite the evidence that Britt's application contained the notation "smelled strongly of Alcohol," I find the credited evidence proved that Hugh Britt had not been drinking on the morning he applied for work with Respondent.

Hugh Britt denied that he had been drinking alcohol before applying for work with Respondent. He denied having alcohol on his breath.

Mark Greer testified that he did not see Hugh Britt drinking alcohol on the morning of October 2 nor did he smell alcohol on Britt. Ronnie Fontana testified that he did not smell alcohol on Hugh Britt on October 2, 1992.

I credit the testimony of Britt, Greer and Fontana that Britt was not drinking. Even though Respondent showed a reasonable belief through the notation on Britt's application, I find that Britt did not engage in misconduct and that Respondent failed to establish that it would not have hired Britt in the absence of protected activity. *G. Wes Ltd. Co.*, 309 NLRB 225, 232 (1992); *Aratex Services, Inc.*, 300 NLRB 115 (1990).

On Ronnie Fontana's application there is a note "10/5 I called his house his son Ronnie said he was working at the papermill in Bastrop." After learning Young had phoned, Fontana phoned Young's office on October 6 but was told Mr. Young was not available. Fontana continued to phone Young's office and left his name, but Young never returned his calls.

I found Ronnie Fontana to be credible. His testimony generally agreed with that of Robert Young regarding Young phoning Fontana's home and learning that Fontana was working at the Bastrop paper mill. Although Young testified that it was his normal practice not to pursue an applicant upon learning the

applicant was already employed, the record established that Fontana continued to pursue the job and, among other things, he advised Respondent of his continued interest by phoning and stopping by Respondent's office and leaving word of his contact. Respondent argued in its brief that Fontana testified that he did not leave a message when he phoned Respondent. However, Fontana testified that he did leave his name and told the secretary that he was returning Young's call to him. With that in mind I am unable to credit Young to the extent his testimony would tend to establish that he exhausted his obligation to continue to treat Fontana as an active applicant.

Mark Greer listed two phone numbers on his application. There is a note on the application, "10/5/92 8:00 am Called the number on application talked to parents they stated he was working & gave me his home phone #. I called the number and there was no answer." Greer testified that he returned Young's call on October 6. Young was not available. Greer left his name and number. He called again on October 7, and left his name and number. Greer went by Young's office on October 16. He was unable to see Young. The secretary told him that his application was still on file.

On April 2, 1993, Greer returned to Respondent's office with Ronnie Fontana and Floyd Sandiford. They talked with Robert Young. Young told them they had some questions on the application forms that should not have been there and they had to throw those applications in the trash. The three asked for new applications but Young replied that he was not taking applications at that time.

Floyd Sandiford's application contains the note "10/5 called wife said that he was working but would have him call me."

Floyd Sandiford testified that he made several unsuccessful attempts to return Robert Young's phone call beginning with three calls to Young's office shortly after Young called his home on October 5, 1992. Sandiford repeatedly left his name and phone number but was not contacted by Respondent. He also went by Respondent's office several times before he finally found Young in the office in April 1993. On that occasion Mark Greer was with Sandiford. Young told them their applications were not good. He declined to accept a new application from either Sandiford or Greer at that time.

Young recalled meeting with Floyd Sandiford at his office. At that time Respondent in settlement of an EEOC case had agreed to do away with all applications that contained questions that the EEOC found objectionable. Young told Sandiford that his application had been discarded. When Sandiford asked for another application Young told him they were not hiring at that time. According to Young they had decided to change their policy and only take applications when they had job openings.

I find that Respondent did not prove that it would not have hired Floyd Sandiford and Mark Greer in the absence of protected activity. Those two applicants pursued their applications after being phoned by Young, and requested reapplication when Young told them that Respondent could not use their original applications. I find that Respondent failed to show any basis in the absence of protected activity, why it would not have hired either Sandiford or Greer after they offered to reapply.

In view of that evidence I find that Respondent failed to establish that it would not have hired Sandiford and Greer but for its inability to reach them by phone.

Young testified that he made three phone calls to Lynn Vestal but was unable to reach him. Lyndon Vestal's application includes the note "10/5/92 called phone # no answer." There was no evidence to dispute Young's testimony and the evidence on Vestal's application regarding Young phoning Vestal. I credit Young's testimony and find that Respondent established that it would not have hired Vestal in the absence of Union activity on its showing that it was unsuccessful in efforts to contact Vestal regarding employment.

The record failed to establish that Young learned of other applicants that were working when they applied. For example E.T. Brister was working for U.S. Steam and Wilburn Williams was working for a union contractor, but there was no showing that Young ever learned those applicants were working. Respondent does argue that after Brister and Williams applied, no electricians were hired in Monroe until March 28, 1993.

Robert Young interviewed Charles Jewell and Joe Gallien. Jewell identified himself as a union official, a union organizer. They were accompanied by Richard Wynn, and, according to Young, all three identified themselves as union members. Young offered a job to Wynn but not to Jewell or Gallien because Wynn indicated he really wanted to work while Gallien and Jewell appeared reluctant to work for \$11 an hour. Wynn rejected the job offer but subsequently he did accept a job with Respondent.

Respondent argued that evidence showed only that applications were made by Peters, Lambert and the Goudeau brothers and it was not established that Robert Young or any other WYE supervisor ever saw those applications. I disagree with Respondent on that point. I shall presume that Respondent had knowledge of the contents of all applications received in its offices or places where applications were shown to have been received in the normal course of business. Robert Young did not recall seeing the applications of Kuykendal, Sumrall, and Butler. He does not recall discussing those applications or any applications from Laurel, Mississippi, with Joey Chambola. Young testified a diligent search was made but Respondent did not locate the applications of Kuykendal, Sumrall, or Butler. I find that Respondent failed to prove that Jackie Kuykendal, Eric Sumrall and Michael Butler would not have been hired in the absence of union activity, on showing that it was unable to locate their applications. The credited record established that all three filed applications with Respondent. That credited evidence proved that Respondent's supervisor and Agent Joey Chambola received their applications. I reject the contention that Respondent has no obligation to treat those application in a nondiscriminatory manner because Respondent lost their applications., *GTE Lenkurt Inc.*, 204 NLRB 921 (1973); *Oklahoma Installation Co.*, 309 NLRB 776 (1992).

I find that Respondent failed to prove that Charles Jewell and Joe Gallien would not have been hired in the absence of union activity, on showing that Young felt both were reluctant to work for \$11 an hour. The record evidence showed that both expressed a willingness to work for Respondent at wages offered.

In view of the full record, I find that the record shows that Respondent did establish that it may have hired the following employees if it could have contacted those employees by phone. I credit Young's testimony to the extent it showed that he was unsuccessful in phoning each respective alleged discriminatee in continuation of the employment process:

Robert Wilson	Larry Jones
Lynn Vestal	Woodroe Silas

Additionally, as shown above, there was no showing that Respondent knew that two applicants were involved in union activity. In all, Respondent proved that it would not have hired six of the alleged discriminatees in the absence of union activities. Those alleged discriminatees include:

Tim Harkins
Larry Jones
Lonnie Peters
Woodroe Silas
Lynn Vestal
Robert Wilson

Respondent also pointed to evidence that it has hired known union members as evidence that it did not treat the alleged discriminatees with disparity. However, the evidence failed to show that Respondent has ever been presented with a situation where Union members were applying for work and telling Respondent that they planned to organize Respondent's employees. That was the situation in this instance from September 28, 1992, when the first of the alleged discriminatees applied for work. Subsequently many of the applicants continued to either tell Respondent's supervisors of their intent to organize or they wore buttons or clothing advising they were union organizers. I find that the record evidence failed to show that Respondent would have failed to hire the alleged discriminatees in the absence of evidence that the Union intended to organize Respondent's employees. *Fluor Daniel, Inc.*, 311 NLRB 498, 500 (1993).

I find that General Counsel proved a prima facie case that Respondent's refusal to hire the below listed applicants and that Respondent failed to prove that those applicants would not have been hired in the absence of union activities:

Steve Barthel	E.T. Brister	Hugh Britt
Michael Butler	Wayne Divine	Ronnie Fontana
Joe Gallien	Herbert Goudeau	Jerry Goudeau
Mark Greer	Charles Jewell	Jackie Kuykendal
Jerry Lambert	Larry Nipper	Eddie Roberts
Floyd Sandiford	Eric Sumrall	Wilburn Williams
Sammy Yelverton		

(b) On November 13, Respondent laid off and has refused to recall, employee Donald Phillips:

October 8, 1992

Donald Phillips is a member of IBEW Local 576 in Alexandria, Louisiana. He applied for work with Respondent at West Monroe on October 8, 1992. Phillips did not reveal that he was an IBEW member. Joey Chambola put Phillips to work at

Riverwood Paper Mill. Phillips also worked on a job at North Monroe Hospital.

Chambola testified that he did not check into Phillips' work history before hiring him.

Donald Phillips had worked for Robert Young during the 1970. He did not see Young at any time after applying for work on October 8 until he saw Young in the office on November 10, 1992. Due to weather after November 10, Phillips next reported for work on November 13. On that day Joey Chambola told him there was not any work and that he should prepare to take off starting November 16. Respondent did not permit Phillips to work at any time after November 10.

John Hopkins testified that he delivered a letter to Respondent on November 16, 1992 addressed to Robert Young. John Robertson and Steve Williams were in Respondent's office. Among other things the letter that was signed by Hopkins, stated:

This letter is written on behalf of Local 446, International Brotherhood of Electrical Workers Union, for the purpose of advising you that Mr. Don Phillips, an employee of yours is also a member of the union.

Phillips checked back with Chambola from time to time but was not used again. When Phillips phoned Chambola around November 25 or 26, he told Chambola that Chambola probably knew he was a union electrician and he would try to organize the job if he was called back to work. Phillips said he would organize before and after work and during lunch breaks.

All other members of the crew Phillips worked with on November 10 including Campo, Councilman, Moss, Marker, Hilton, Holson, the Hodnett brothers and Goins, continued to work for Respondent. Phillips testified that on November 10 there was very little work left on the Riverwood job. The job at the hospital was just starting and that was where he was assigned to work on November 10. He worked on installing temporary service for use in running construction tools.

Phillips phoned Respondent again on November 30. His call was returned by Robert Young. Young said he was not hiring at that time. Phillips has not been contacted by Respondent since that time.

Robert Young testified that Donald Phillips was laid off because they did not have work for him. Phillips worked on a crew with Ray Holton, Brian Hodnett, Chris Hodnett, and Floyd Hansen. Phillips was laid off and the other four crew members except "one of the Hodnett boys, who may have also missed some work at that time," were transferred to other jobs. Young denied that he knew that Phillips was a member of the Union at the time he was laid off. Phillips was laid off on November 13. Young indicated in his prehearing affidavit that none of the other members of Phillips' crew were laid off and the "week of November 17 they were moved to other jobs."

Respondent introduced a list of 29 electrician and helper employees that were laid off after Phillips, from November 18, 1992, through February 3, 1993. Only three of those 29 employees, Charles Murphy, Jeffrey Moreau, and Robert Bunner have been rehired. Young testified that Charles Murphy had worked for Respondent before and was a good employee. Jef-

frey Moreau and Robert Bunner had been working longer than Donald Phillips at the time of their layoffs.

Joey Chambola testified that he made the decision to lay off Donald Phillips. Chambola testified that the job was winding down and Phillips was the youngest employee. Chambola denied knowing that Phillips belonged to the Union when he decided to lay him off. He told Phillips that he would call him if anything came up in the future. Chambola testified that he told Phillips that he was being laid off before Chambola saw the letter identifying Phillips as being affiliated with the Union. He told Phillips that work had gotten slow and he was the last one hired so he was going to have to be laid off.

Chambola admitted that Phillips was the only one of the workers on that job that was laid off. All but two were transferred to other jobs but not laid off. Two were retained on the job.

John Hopkins testified that while Phillips was working for Respondent, Robert Young phoned the Local Hall on one occasion and asked for Donald Phillips. Hopkins was unaware of any other calls from Young to the Hall.

Credibility

As to all my credibility findings, I rely extensively on the demeanor of the witness as well as factors including probability and corroboration to name a few.

I was not impressed with Harry Richardson's demeanor. I do not credit his testimony that was in dispute.

I was not convinced that Robert Young was completely candid in his explanation as to why he did not hire some of the applicants and I was especially doubtful as to the sincerity of his testimony that union affiliation was not a consideration in his decision to hire or fire employees.

Donald Phillips testified at some length. At points in his cross examination I was convinced that Mr. Phillips was not completely truthful. For example he was asked about the date he saw Mr. Young drinking coffee in the office and how he recalled that date. He was somewhat evasive but finally responded that he checked his personal records to recall that date. However, his record of that date made no mention of having seen Young. I cannot credit Phillips' testimony to the extent it conflicts with credited evidence. I specifically discredit Phillips' testimony regarding his being seen by Robert Young on November 10 in view of the confusion between his testimony and his contemporaneous notes for that day.

I found John Hopkins to be a credible witness. I credit his testimony.

Findings

In consideration of the alleged illegal layoff and refusal to recall Donald Phillips, I shall first consider whether General Counsel proved prima facie that one of the reasons for the action was Union activity. If I find in support of General Counsel then I shall consider whether Respondent proved that it would have laid off Phillips in the absence of his union activities. *Wright Line*, 251 NLRB 1083 (1980), enf'd 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989, 102 S. Ct. 1612, 71 L. Ed. 2d 848 (1982); *NLRB v. Transportation Mgmt. Corp.*, 462 U.S. 393, 113 LRRM 2857 (1983). See *Electromedics, Inc.*, 299 NLRB 928, affirmed 947 F.2d 953 (10th Cir. 1991).

(1) Evidence of union activity and Respondent's knowledge:

The record established that Phillips did engage in Union activity. However, in view of my discrediting Phillips' testimony that tended to show that Respondent may have realized that he supported the Union when recognized by Robert Young on November 10, I find the credited evidence failed to show that Respondent was aware of Phillips' union activity until November 16, 1992, when John Hopkins delivered a letter to Respondent from the Union stating that Phillips was a member of the Union. The record does show that Respondent has continued to fail to reinstate Phillips since November 16.

(2) Evidence of union animus and that the discharges had the effect of encouraging or discouraging union membership:

Respondent, through its supervisors and agents, Joey Chambola, Harry Richardson, John Robertson, Marc Conerly, and James Cox engaged in conduct in violation of section 8(a)(1). I find that and the full record illustrates animus against the Union and by threatening an employee that Respondent desired that he turn down an out of state job offer because of his union affiliation. I find that by refusing to hire employees shown to support the union Respondent engaged in activity that by its very nature, tended to discourage employees from union membership.

The credited evidence failed to show that Respondent knew of Phillips' union membership before his layoff on November 10. It learned he was a union member on November 16. I find that General Counsel failed to prove that Phillips' union activity was a cause of his lay off.

There remains an issue of whether Respondent's failure to recall Phillips at any time after it learned of his union affiliation. In order to establish a prima facie case it is necessary for General Counsel to prove that one reason for Respondent's failure to employ Phillips since November 16, 1992, was protected activity.

General Counsel argued that Respondent hired an employee, Kittinger, on November 18 on a project in Pineville. Pineville adjoins Alexandria—Phillips' home Local. General Counsel argued that Respondent has hired approximately 62 employees in Louisiana since Phillips was laid off. General Counsel argued that Respondent's records show that it recalled/rehired numerous employees.

Brian Kittinger applied at Pineville, Louisiana, on December 9, 1992. According to Respondent's records he actually worked at International Paper, Pineville from November 18, 1992, until February 26, 1993, and from June 22, 1993, until December 16, 1993.

Respondent, on the other hand, argued that it was laying off electricians and helpers from November 18 through February 3, 1993. Of those employees laid off during that period only three have been recalled.

Despite my inability to credit Donald Phillips' testimony that he was recognized by Robert Young on November 10, the record is not in dispute that he was identified as a union supporter in the Union's letter delivered to Respondent on November 10, 1992. Throughout the period since November 10, Respondent has refused to reinstate Phillips even though others were recalled to work and an employee was hired in Pineville (within a short distance of Phillip's home Local). That employee was

hired 2 days after Respondent was notified that Phillips was a union member and 5 days after Phillips was laid off. I find that General Counsel proved a prima facie case that Phillips would not have been recalled in the absence of his union activity.

Respondent contended that Phillips would not have been recalled in the absence of his union activity. In support of that argument it introduced evidence that layoffs continued after Phillips was laid off. Of the 29 electricians laid off since Phillips, only three have been recalled. Nevertheless, as shown above, the credited evidence proved that Respondent hired employees after Phillips was laid off. One employee was hired in Phillips' home Local at Pineville after Phillips' layoff and after Respondent learned that Phillips was a union member. I find under those facts, that Respondent failed to prove that it would have failed to recall Phillips in the absence of his union activities.

(c) On December 7, 1992 Respondent isolated employee Stacy Williams from other employees; October 1992:

Stacey Williams testified that after his first day of work with Respondent during October 1992, he was supplied with a helper, Tommy Tanksley. On occasion, like when a truckload of materials came in, Tanksley would be pulled away from Williams to help unload the truck. However, otherwise Tanksley worked regularly as Williams' helper.

December 7, 1992

On December 7, 1992, Stacey Williams told Harry Richardson that he was a Union organizer. He wore his IBEW shirt and sticker. Williams testified that his helper was pulled off the job with him the following day. Thereafter Williams was assigned to work in areas where he was not in contact with other employees. On several occasions Williams told Harry Richardson that he needed a helper for a particular job. On some of those occasions Richardson helped with the work. On other occasions Richardson ignored Williams' request.

On cross examination Williams admitted that he did see other employees during lunch and break times after December 7.

Robert Joel Hill testified that while he was working for Respondent at Doctors Hospital in Jackson, Mississippi, he overheard Harry Richardson talking on the phone in mid-December 1992.

I heard him say, Yes, sir, Mr. Young, Yes, sir, Mr. Young a couple of times, and he said, Yes, sir, I hired him. And then he said, No, I didn't know he was at the time but they don't have to know that. And he said, Well, they all came out here acting like they were the best electricians in the world, and then he said, Well, Stacy came up here with a hard luck story about needing money for Christmas, and so I hired him, yes, I hired him—something to that effect.

Hill testified that Stacey Williams was another IBEW member working on the Doctors Hospital Job. Hill talked with Harry Richardson after overhearing Richardson's phone conversation. Employee Donald Edwards was also present. Hill testified that he asked Richardson if "he was going to lay us all off to get to Stacey." Richardson replied, "Not until we get caught up."

Project Manager Jim Cox admitted that in December 1992 Hill did tell him that he had heard rumors that Respondent was going to lay off employees in order to get rid of Stacey Williams. Cox recalled that conversation occurred during the last couple of weeks of the Jackson job. Cox recalled that he told Hill:

... that the job was almost over and I needed for everybody to work and get the job done so we could get out of there and that the people that worked were going to be my first choice to go to the next job.

Cox testified that in response to Hill asking him why the Union wanted in he may have said something about they may think we would be less competitive. He denied that he told Hill that the Union coming in would make Respondent less competitive.

Project Manager Jim Cox testified about how he learned that Stacey Williams supported the Union:

Only discussion I really recall is Harry (Richardson) telling me when I came to do a job visit that Stacey was wearing an Union button and once when Mr. Hill, when I asked him how he was doing, asked me was I aware of it.

Despite Cox' testimony to the contrary, Harry Richardson denied that he told Jim Cox that Stacey Williams was wearing a union button.

According to Joel Hill, Stacey Williams started wearing union organizing buttons on his shirt at work before he overheard the phone conversation with Richardson. Hill testified that Stacey Williams, along with Hill and other electricians, had a helper before Williams started wearing union organizer buttons. After he started wearing those buttons, Stacey Williams was placed off in another section without helpers. Williams was required to work flexible conduit down through a finished sheetrock wall. Normally that task required two workers but Williams was assigned the task without help.

Project Manager Jim Cox testified that he visited the Jackson job in mid December 1992. At that time he saw Stacey Williams working with Tommy Tanksley. Tanksley was helping Stacey Williams. Cox testified that he was aware at that time that Williams was in the Union. Cox recalled Williams wearing a Union button on only one occasion. On that occasion he was not working with Tanksley. Instead Williams was standing around. When he saw Williams working with Tanksley after he learned Williams was for the Union, Williams was not wearing a union button.

Tommy Tanksley testified that he worked for Respondent as an electrician helper. When he submitted his application for employment Harry Richardson told him his application would be sent to the main office and that he would learn in a couple of weeks whether he had been hired. Tanksley denied that Richardson questioned any employee including Stacey Williams, about the Union. Stacey Williams talked in favor of the Union during the time he worked with Tanksley and Tanksley told Harry Richardson that Williams was talking about the Union on Company time.

Tanksley testified that he continued to work as Stacey Williams' helper after he learned that Williams favored the Union.

Tanksley did not hear Richardson make any negative comment about the Union.

Harry Richardson testified that when he was employed by Respondent he never questioned an employee or an applicant about union activities, membership, or sympathies. He specifically denied questioning Stacey Williams about the Union. Richardson testified that Williams asked him if Respondent was union and Richardson told him it was not. Richardson then looked at Williams' application and asked "Is Spence union?" Richard Spence was listed by Williams on his application as a personal reference and as his last employer. Richardson admitted that he listened to a tape recording of his conversation with Stacey Williams before he testified in this hearing. Richardson testified that the tape recording had been altered and did not include Williams asking if Wye Electric was union.

Richardson testified that he did not have authority to hire employees while he worked with Respondent. However, he admitted that he did hire Stacey Williams. Williams gave him a sad story and he told Williams to come in and work the following Monday. In the meantime Richardson checked and got an okay to hire Williams. Richardson also hired Bobby Bunner before sending Bunner's application to Respondent's office.

Credibility

Stacey Williams did not impress me as a credible witness as to his complete testimony. His testimony conflicted with a tape recording made by him of a conversation with Harry Richardson. To the extent of the conflicts, I credit the evidence contained in the tape recording.

Robert Joel Hill appeared to testify truthfully. I credit his testimony including that regarding the phone call he overheard being made by Harry Richardson and his conversations with Richardson and James Cox regarding the possible layoff of Stacey Williams. I also credit Hill's testimony regarding Respondent isolating Williams.

I was not impressed with Harry Richardson's demeanor. He denied telling Jim Cox that Stacey Williams was wearing a union button even though Cox recalled that Richardson did tell him that Williams was wearing a union button.

Jim Cox appeared to have some difficulty in recalling events in late 1992. In most respects he appeared to testify truthfully. To the extent there are conflicts I credit the testimony of Joel Hill and discredit Jim Cox.

I am unable to credit the testimony of Tommy Tanksley. His testimony conflicted with his prehearing affidavit testimony. On the basis of his demeanor and the full record I find that I cannot credit his testimony that is in dispute with other credible evidence.

Findings

In consideration of the alleged isolation of Stacey Williams, I shall first consider whether General Counsel proved prima facie that one of the reasons for the isolation was union activity. If I find in support of General Counsel then I shall consider whether Respondent proved that it would isolate Williams in the absence of his union activities. *Wright Line*, 251 NLRB 1083 (1980), enf'd 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989, 102 S. Ct. 1612, 71 L. Ed. 2d 848 (1982); *NLRB v. Transportation Mgmt. Corp.*, 462 U.S. 393, 113 LRRM 2857

(1983). See *Electromedics, Inc.*, 299 NLRB 928, 937, affirmed 947 F.2d 953 (10th Cir. 1991).

The record established that Williams did engage in union activity. I fully credit the testimony of Joel Hill. His testimony illustrated that Williams wore union buttons to work and that Harry Richardson discussed Williams' prounion actions with Robert Young.

Absent the supporting testimony of Robert Joel Hill, that I credit in full, I would be unable to determine that Williams was actually isolated in his work. However, I credit Hill's testimony that after Williams started wearing buttons, he was placed in another section without helpers and required to work flexible conduit down through sheetrock.

I am convinced from the record that Respondent learned that Stacey Williams supported the Union. It was disturbed over that news and there were threats associated with laying off Williams because of his union activities. I find that General Counsel proved a prima facie case as to the isolation of Williams.

Respondent pointed out that Williams worked until he quit on December 17, 10 days after he announced his union affiliation. Respondent argued that the log of Harry Richardson illustrated that Williams had not been isolated. As shown above, I do not credit Richardson. However, the evidence showed that he contemporaneously maintained a log. The log showed that Williams and Tanksley worked together on December 7 and 8. However, according to the log, Williams did not work with Tanksley after December 8. The log shows that Williams was assigned to another unit along with other employees on December 9 and that Williams worked by himself on December 14. That evidence does not conflict with the credited testimony of Joel Hill. Richardson's log also showed that frequently before December 7, Williams was not assigned to work with Tanksley.

In view of the above and in consideration of the short time Williams worked after he announced his union affiliation, I am convinced that Richardson's log correctly shows that Williams was not treated materially differently after December 7 than he was before that date. I find that Respondent proved that it would have acted in the same fashion in the absence of Williams' union activity. I find that the record shows that Respondent did not engage in an unfair labor practice by its assignments to Stacey Williams.

CONCLUSIONS OF LAW

1. Wye Electric Co., Inc., Monroe, Louisiana, is an employer engaged in commerce within the meaning of section 2(6) and (7) of the Act.

2. International Brotherhood of Electrical Workers, Locals 446, 480, and 576, AFL-CIO, are labor organizations within the meaning of section 2(5) of the Act.

3. Respondent, by interrogating its employees about their union activities; by threatening its employees with layoffs because of their union activities; by threatening its employees that Robert Young's goal was to shut down unions in Mississippi, Arkansas and Monroe; and by threatening its employee that Respondent wanted him to decline a job assignment because of

his union activities; has engaged in conduct violative of section 8(a)(1) of the Act.

4. Respondent by refusing to hire or, in the case of Phillips, to rehire, any of the following employees because of their union affiliation and preference has engaged in conduct violative of section 8(a)(1) and (3) of the Act:

Steve Barthel	E.T. Brister	Hugh Britt
Michael Butler	Wayne Divine	Ronnie Fontana
Joe Gallie	Herbert Goudeau	Jerry Goudeau
Mark Gree	Charles Jewell	Jackie Kuykendal
Jerry Lambert	Larry Nipper	Donald Phillips
Eddie Roberts	Floyd Sandiford	Eric Sumrall
Wilburn Williams	Sammy Yelverton	

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of section 2(6), (7), and (8) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent has illegally refused to hire or recall any of the below named employees in violation of sections of the Act, I shall order Respondent to offer those employees immediate and full employment to the positions for which they applied and are qualified or, if those positions no longer exist, to substantially equivalent positions. I further order Respondent to make those employees whole for any loss of earnings suffered as a result of the discrimination against them. Backpay shall be computed as described in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Steve Barthel	E.T. Brister	Hugh Britt
Michael Butler	Wayne Divine	Ronnie Fontana
Joe Gallien	Herbert Goudeau	Jerry Goudeau
Mark Greer	Charles Jewell	Jackie Kuykendal
Jerry Lambert	Larry Nipper	Eddie Roberts
Floyd Sandiford	Eric Sumrall	Wilburn Williams
Sammy Yelverton	Donald Phillips	

Despite the above findings, the record failed resolve several issues that may be relevant to the employment (recall) and make whole portions of the remedy. Those issues which may include among others, when each alleged discriminatee would have been hired in the absence of union activities under Respondent's normal nondiscriminatory practices and if and when each alleged discriminatee may have been laid off in the absence of union activities under Respondent's normal nondiscriminatory practices may be considered in compliance proceedings if necessary. *Casey Electric*, 313 NLRB 774 (1994); *Dean General Contractors*, 285 NLRB 573 (1987). Unlike the situation in *Casey Electric*, the record did not show whether Respondent had appropriate openings for all the alleged discriminatees at the times they filed applications. The record does show through evidence that I credit, that it was Respondent's policy to refer to applications to fill jobs as they came open on

dates that may have been after the date of the filing of the applications. Therefore, it may be necessary to determine in compliance proceedings, the dates on which each of the above named employees would have been hired in the absence of Respondent's illegal activities.

Upon the foregoing findings, conclusions of law and the entire record, and pursuant to section 10(c) of the Act, I issue the following recommended:

ORDER¹

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is hereby ordered that Respondent, Wye Electric Co., Inc., West Monroe, Louisiana, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) interrogating its employees or job applicants about the Union; threatening its employees with lay offs because of their union activities; threatening its employees that Respondent president's goal is to shut down unions in Mississippi, Arkansas and Monroe; and threaten its employees that an employee is being assigned an out of state job in the hope he will resign because of his Union.

(b) Refusing to employ job applicants and refusing to recall its employee from layoff, because of their Union or other protected activities.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer immediate and full employment to the below listed employees in positions for which they applied and are qualified or, if nonexistent, to substantially equivalent positions, and make them whole for any loss of earnings plus interest, suffered by reason of its illegal actions:

Steve Barthel	E.T. Brister	Hugh Britt
Michael Butler	Wayne Divine	Ronnie Fontana
Joe Gallien	Herbert Goudeau	erry Goudeau
Mark Greer	Charles Jewell	Jackie Kuykendal
Jerry Lambert	Larry Nipper	Eddie Roberts
Floyd Sandiford	Eric Sumrall	Wilburn Williams
Sammy Yelverton		

(b) Offer to Donald Phillips immediate reinstatement to his former position with full backpay and benefits with interest in accordance with the remedy section of this decision with no loss of seniority or other rights and privileges previously enjoyed.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, and timecards, personnel re-

¹ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

cords, reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in West Monroe, Louisiana, copies of the attached notice.² Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director, Region 15, in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 7, 1995

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate our employees about their activities on behalf of International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization.

WE WILL NOT threaten our employees with lay offs because of their Union activities.

WE WILL NOT threaten our employees that Respondent's president's goal is to shut down unions in Mississippi, Arkansas, and Monroe.

WE WILL NOT threaten our employees that an employee is being assigned an out of state job in the hope he will resign because of his Union.

WE WILL NOT threaten to lay off our employees because of their Union affiliation or preference.

WE WILL NOT refuse to employ the following named applicants:

Steve Barthel E.T. Brister Hugh Britt

Michael Butler	Wayne Divine	Ronnie Fontana
Joe Gallien	Herbert Goudeau	Jerry Goudeau
Mark Greer	Charles Jewell	Jackie Kuykendal
Jerry Lambert	Larry Nipper	Eddie Roberts
Floyd Sandiford	Eric Sumrall	Wilburn Williams
Sammy Yelverton		

WE WILL offer immediate and full reinstatement to the below listed employees in positions for which they applied and qualify or if nonexistent, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges:

Steve Barthel	E.T. Brister	Hugh Britt
Michael Butler	Wayne Divine	Ronnie Fontana
Joe Gallien	Herbert Goudeau	Jerry Goudeau
Mark Greer	Charles Jewell	Jackie Kuykendal
Jerry Lambert	Larry Nipper	Eddie Roberts
Floyd Sandiford	Eric Sumrall	Wilburn Williams
Sammy Yelverton		

WE WILL make the above named employees whole for any loss of earnings suffered by reason of our discrimination against them with interest.

WE WILL offer to Donald Phillips immediate reinstatement to his former position with full backpay and benefits with interest in accordance with the remedy section of this decision with no loss of seniority or other rights and privileges previously enjoyed.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

Bruce E. Buchanan, Esq., for the General Counsel.

Michael D. Lucas, Esq., Washington, DC, for the Charging Party.

H. Mark Adams, Esq., *Carl D. Rosenblum* and *Rebecca G. Moore, Esq.*, of New Orleans, Louisiana, for the Respondent.

SUPPLEMENTAL DECISION

On June 7, 2000, the National Labor Relations Board remanded the decision in this matter (JD(ATL)-16-95), for consideration in light of its decision in *FES (A Division of Thermo Power)*, 331 NLRB 9 (2000). The Board held:

On May 11, 2000, the Board issued its decision in *FES (A Division of Thermo Power)*, 331 NLRB 9, settling forth the framework for analysis of refusal-to-hire and refusal-to-consider violations. The Board has decided to remand this case to the judge for further consideration in light of *FES*, including, if necessary, reopening the record to obtain evidence required to decide the case under the *FES* framework.

On July 14, 2000, the parties (General Counsel and Respondent) filed a joint response to my order to show cause in which the parties agreed that it was not necessary to "present any further evidence in this matter." "Rather, (the parties) find the evidence is already presenting the record for Administrative Law Judge Robertson to perform the necessary analysis under *FES*. In so stating, the parties maintain their respective positions as previously articulated in record evidence and briefs and reserve the right to present additional evidence under the guide-

² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

lines of *FES* in any future compliance proceeding, if such is necessary. The Charging Parties concur in this Response.”

The refusal-to-hire violations mentioned by the Board in its remand order dealt with allegations and findings in the underlying decision and in decisions cited at *NLRB v. Town & Country Electric, Inc.* 116 S. Ct. 450, 150 LRRM 2897 (1995); *Town & Country Electric, Inc.*, 309 NLRB 1250 (1994). The overriding issue concerned applications for work by people employed by a Union and others affiliated with the Union. At the time of the underlying decision (JD(ATL)-16-95) the Supreme Court had not issued its decision cited above.

The National Labor Relations Board cited *NLRB v. Town & Country Electric, Inc.* 116 S. Ct. 450, 150 LRRM 2897 (1995) in a number of decisions but some circuit courts of appeal did not adopt the Board’s findings. In *FES* the Board reconsidered its approach to cases involving *Town & Country Elec., Inc.* type issues. I have attempted to apply the Board’s findings in *FES* here.

The term “salting” is frequently used in *Town & Country Elec., Inc.* type cases. Unions sometimes attempt to “salt” jobs in order to place employees for organizational purposes. I discussed that matter in JD (ATL)-16-95, p. 44, at a time before the Supreme Court issued its decision in *Town and Country*:

The record illustrated that many of the alleged discriminatees did apply for work under the Union’s salting program. Some of those applicants were paid union organizers. Others held themselves out to Respondent to be union organizers even though they were neither paid union employees nor volunteers that received some money from the Union. The U.S. Supreme Court in *Town & Country* may consider the issue of whether those applicants were employees. I find that the fact that those applicants were sent to Respondent by the Union does not show that those applicants were acting in bad faith by applying for work with Respondent. Even though many were shown to have applied solely because they were instructed to do so by the Union, I find that the record does not support Respondent’s contention to the extent it would tend to imply that those applicants planned to perform less than satisfactory work for Respondent. The record does not support such a finding. Several of the applicants responded to Respondent’s queries to the effect they would leave work with Respondent if directed to do so by the Union. When asked by the Union, those applicants agreed they would leave any job, including a union contractor job, if directed to do so by the Union. I find that evidence does not support a finding that the applicants were not bona fide.

With that background information, I shall consider the issues raised by the Board’s remand order. Respondent and General Counsel filed briefs. In consideration of the remand order, briefs filed by General Counsel and Respondent, and the full record, I make the following findings.

My review of the underlying decision is limited. The Board has established that the administrative law judge is limited to considering only those matters specified by the Board’s order. *Monark Boat Co.*, 276 NLRB 1143, 1143 fn. 3 (1985), enf’d. 800 F.2d 191 (8th Cir. 1986).

In regard to the issues in remand, Board in *FES* found that the General Counsel has the burden of proving:

(1) That the respondent was hiring or had concrete plans to hire;

(2) That the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire;

(a) “The showing of an available opening entails a showing that the applicant had experience or training relevant to the announced or generally known requirements of the openings.” “General Counsel’s burden in this regard is limited to showing that the applicants met the employer’s publicly announced or generally known requirements of the position, to the extent that these facial requirements are based on nondiscriminatory, objective, and quantifiable employment criteria.”

(3) That antiunion animus contributed to the decision not to hire the applicants.

Upon General Counsel proving the above elements, the burden shifts to respondent to show that it would not have hired the applicants even in the absence of union activity or affiliation. If the respondent asserts that the applicants were not qualified for the positions it was filling, it is the respondent’s burden to show, at the hearing on the merits, that they did not possess the specific qualifications the position required or that others had superior qualifications, and that it would (not) have hired them for that reason even in the absence of their union support or activity.

The underlying decision shows that Respondent was hiring at material times. I cited the test applied by the Board in *J.E. Merit Constructors*, 302 NLRB 301, 303-304 (1991), in determining that General Counsel must prove (1) the applications were filed during the hiring stages; (2) the Respondent knew of the source of the applications; (3) that respondent harbored union animus; and (4) respondent acted on that animus in failing to hire the alleged discriminatees (E.g., JD(ATL)-16-95, slip opin. p. 44, lines 35-40).

“The record illustrated that Respondent advertised in local newspapers and continued to hire electricians from September 28, 1992” (JD (ATL)-16-95, p. 44).

The alleged discriminatees applied for work beginning September 28, 1992.

The record illustrated that Respondent hired at least 20 employees in positions that the alleged discriminatees could have filled, between September 28, 1992, and February 2, 1993 (GCX 14). In the underlying decision I found that Respondent had lawfully refused to hire six of the alleged discriminatees.¹ Those were Tim Harkins, Lonnie Peters, Robert Wilson, Larry Jones, Lynn Vestal, and Woodroe Silas. There is nothing in remand or the Board’s *FES* decision that would cause me to reconsider those findings.

Respondent hired three electricians other than alleged discriminatees that applied on September 28. Donald Edwards applied in Jackson, Mississippi. Edwards worked on Respondent’s St. Dominics project from October 2, 1992, until December 28, 1992. Gary Cauthen applied in Jackson. He was

¹ As shown in the underlying decision I found that Respondent had no knowledge as to the protected activity of two of the alleged discriminatees and that Respondent proved it would have hired another four alleged discriminatees in the absence of their protected activity.

employed for one day at Respondent's St. Dominics job on October 8, 1992. James Mathews Jr. applied on September 28, in Dodson, Louisiana. He worked at Respondent's Willamette job in Dodson from September 28 until January 27, 1993.

Respondent hired John P. Cooley at its St. Dominics job on September 30, 1992. It hired Charles Stevens on October 5, and Ronnie Campo on October 7, 1992, in West Monroe, Louisiana. Robert Young testified about hiring Charles Wallace in 1992².

Respondent offered a job to Richard Wynn on October 8, 1992, and Wynn rejected that offer. Respondent hired Donald Phillips on October 20, 1992. James Mathews and Chris Mathews were hired in Dodson, Louisiana, on October 12, 1992. Darwin Pierce was hired on October 27, in West Monroe. Charles Murphy and Kyle Lee Gregg were employed at Dodson and Bossier City, Louisiana, on October 26, 1992. Steve Williams was employed in late October as a helper. Robert Bunner was employed from December 3, 1992 in Jackson, Mississippi. Brian Kittinger was hired at Respondent's International Paper job in Pineville, Louisiana, on December 9, 1992. (E.g., JD (ATL)-16-95, pp. 44-45).

After 1992 Respondent continued to hire electricians. Two electricians were hired in January, one in February, four in March and April, and another five in May 1993.

The issue of antiunion animus was discussed in the underlying decision and need not be reconsidered in this remand. Regarding Union affiliation and Respondent's knowledge of those connections, I stated:

I find that the evidence proves that the following applicants engaged in Union activity and that Respondent was aware of their Union activities at the time of their applications for employment:

Steve Barthel	E.T. Brister	Hugh Britt
Michael Butler	Wayne Divine	Ronnie Fontana
Joe Gallien	Herbert Goudeau	Jerry Goudeau
Mark Greer	Charles Jewell	Larry Jones
Jackie Kuykendal	Jerry Lambert	Larry Nipper
Eddie Roberts	Floyd Sandiford	Woodroe Silas
Eric Sumrall	Lynn Vestal	Wilburn Williams
Robert Wilson	Sammy Yelverton	

I made the following findings regarding proof that Respondent would not have hired some of the 23 alleged discriminatees in the absence of their union affiliation:

In view of the full record, I find that the record shows that Respondent did establish that it may have hired the following employees if it could have contacted those employees by phone. I credit Young's testimony to the extent it showed that he was unsuccessful in phoning each respective alleged discriminatee in continuation of the employment process:

Robert Wilson	Lynn Vestal	Larry Jones
Lynn Vestal	Woodroe Silas	

² Robert Young testified that he was unaware that Charles Wallace was an IBEW member when Respondent hired Wallace in 1992. As shown above, Wallace was not actually an IBEW member at that time.

Additionally, as shown above, there was no showing that Respondent knew that two applicants were involved in Union activity. In all, Respondent proved that it would not have hired six of the alleged discriminatees in the absence of Union activities. Those alleged discriminatees include:

Tim Harkins	Larry Jones	Lonnie Peters
Woodroe Silas	Lynn Vestal	Robert Wilson

Respondent also pointed to evidence that it has hired known union members as evidence that it did not treat the alleged discriminatees with disparity. However, the evidence failed to show that Respondent has ever been presented with a situation where union members were applying for work and telling Respondent that they planned to organize Respondent's employees. That was the situation in this instance from September 28, 1992, when the first of the alleged discriminatees applied for work. Subsequently many of the applicants continued to either tell Respondent's supervisors of their intent to organize or they wore buttons or clothing advising they were union organizers. I find that the record evidence failed to show that Respondent would have failed to hire the alleged discriminatees in the absence of evidence that the Union intended to organize Respondent's employees. Fluor Daniel, Inc., 311 NLRB 498, 500 (1993).

I find that General Counsel proved a prima facie case that Respondent's refusal to hire the below listed applicants and that Respondent failed to prove that those applicants would not have been hired in the absence of union activities:

Steve Barthel	E.T. Brister	Ronnie Fontana
Michael Butler	Wayne Divine	Jerry Goudeau
Joe Gallien	Herbert Goudeau	Jackie Kuykendal
Mark Greer	Charles Jewell	Eddie Roberts
Jerry Lambert	Larry Nipper	Wilburn Williams
Floyd Sandiford	Eric Sumrall	
Sammy Yelverton	Hugh Britt	

In view of the above and the full record I am convinced that (1) Respondent was hiring at material times; and (2) Respondent demonstrated antiunion animus that contributed to its election to neither consider nor hire the above mentioned nineteen alleged discriminatees.

However, the underlying decision does not reveal whether "the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire." As to that question I shall consider the record evidence and the parties' briefs, as to those found to be discriminatees in the underlying decision. Additionally, there remains some questions regarding hiring at different locations.

Respondent argued that it would not have hired the discriminatees in the absence of their protected activity; that the discriminatees were not bona fide applicants; that it never saw applications for some of the discriminatees; that some of the discriminatees were unwilling to work for wages offered by Respondent; and that it did not treat the discriminatees with disparity.

All the above issues were considered in the underlying decision and none of those issues are included in the Board's remand. Under Board precedent I am not at liberty to reconsider them at this time (*Monark Boat Co.*, 276 NLRB 1143 fn. 3 (1985), *enfd.* 800 F.2d 191 (8th Cir. 1986). However, this remand does not deprive the parties of any rights before the Board. Regardless of my decision herein, the rule of *Monark Boat* will not limit the Board when and if the case returns to it following the remand decision.

As to those employees found in the underlying decision to have been unlawfully denied work:

The record shows that Steve Barthel applied for work on September 28, 1992. Respondent's application form used at material times included space for three previous employers. Barthel wrote that he had electrical experience with all three employers³ including Respondent. Barthel also wrote that he had completed JATC apprenticeship (GCX 3). Respondent admitted in its brief that it was hiring on September 28 and that General Counsel produced evidence that some of the September 28 applicants⁴ were qualified. However, Respondent argued that General Counsel failed to prove that Steve Barthel was qualified. Barthel did not testify at the hearing. As to Barthel the evidence of his qualification is contained in his application. Moreover, the record failed to prove that Respondent checked into Bethel's qualifications. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Barthel in the absence of his Union affiliation.

E.T. Brister applied on October 30, 1992. He had 25 years as a journeyman wireman and had completed IBEW apprenticeship (GCX 3). He listed U.S. Steam Service and Indianapolis Elect. in Indianapolis, Indiana, as the two immediately previous employers and that he worked for both as a journeyman wireman. He also listed a third employer—T.V.A.—but did not list his position. I find that the record showed through Brister's application, that he was qualified to fill Respondent's jobs. However, Respondent properly raised the question of whether it was hiring at the time Brister applied. From 4 days before Brister applied at West Monroe, no electricians were hired in the West Monroe area until March 28, 1993 (GCX 14), and Brister admitted that he never followed up on his application. Therefore, I find that the record does not show that Respondent was hiring at relevant times after Brister's application. His application was almost 5 months old when Respondent next hired in the West Monroe vicinity and he did nothing to inform Respondent that he wanted it to continue to consider his application.

Hugh Britt applied on October 2, 1992. He had 28 years as a journeyman electrician. Respondent argued here as it did before the underlying decision, that it would not have hired Britt because Respondent secretary Gay Heckford reported to President

Young that Britt smelled of alcohol. I found to the contrary in the underlying decision and I am not at liberty to reconsider any matter outside the scope of the Board's remand. Therefore, I am bound by the underlying decision. Britt testified that he went through the Local 446 JATC program. He has been a member of Local 446 for 14 years and had worked as electrician, foreman, general foreman and electrical superintendent, when he applied to work for Respondent. Britt admitted that when he applied for work with Respondent, he was employed as a foreman at U.S. Steam and was earning \$16.95 an hour. He had heard that Respondent was paying around \$11 an hour. He testified that he would have accepted work with Respondent because his U.S. Steam job was almost completed. That job would have lasted about 6 months more. He admitted that one reason he applied was to help the Union organize Respondent. General Counsel proved that Britt was qualified to perform Respondent's available work and Respondent was hiring at material times after Britt applied. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Britt in the absence of his union affiliation.

Michael Butler applied on October 7 or 8, 1992. He had 5 years as a journeyman wireman. Butler applied with Jackie Kuykendal and Eric Sumrall. They accompanied Assistant Business Agent Yelverton on a trip from near Laurel, Mississippi to Respondent's facility in West Monroe, Louisiana. Butler testified that Project Manager Chambola interviewed them and they told Chambola of their union membership. Respondent argued those applications were misplaced and not considered and that Chambola did not pursue those applications because the applicants lived too far away from its jobs⁵. Chambola pointed out that they lived 100 miles from West Monroe. However, Kuykendal told Chambola that they would work anywhere. Moreover, that issue was considered in the underlying decision and cannot be reconsidered under this remand. As to whether Butler was qualified, he had been a journeyman electrician for about 5 years. On cross-examination he testified that he and Eric Sumrall had worked together for union contractors before applying with Respondent. Kuykendal testified that both Butler and Sumrall worked under his supervision. In view of the full record I am convinced that Butler was qualified even though Respondent contended that his application was misplaced, and cannot be considered. His testimony shows that he was qualified and Respondent's project manager Chambola said nothing during the interview involving Butler, Kuykendal, and Sumrall that illustrated any concern with their qualifications. As to whether Respondent was hiring, according to Butler Chambola told them he could use them locally but it would

³ Barthel listed Klinger Electric, Wye Electric, and Construction Electric as previous employers.

⁴ Respondent conceded that General Counsel produced evidence that Divine, Silas, and Wilson were qualified for employment. As shown above, I found that Respondent proved that it would not have hired Silas and Wilson absent their Union affiliation.

⁵ Here I draw a distinction between Respondent's determination that applicants lived too far from a job and its showing that no one was hired during certain periods at a job or in an area. When someone applies for a certain job or under conditions that show an intent to work on a job or in an area, a question arises as to whether Respondent hired at material times on that job or in that area. However, as to whether an applicant lived too far away I considered in the underlying decision, factors including what was Respondent's practice as to hiring and whether it regularly required applicants to live within a certain distance of its job.

be better for them to work in Jackson. The record shows that Respondent did hire at material times after Butler, Kuykendal, and Sumrall applied. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Butler in the absence of his Union affiliation.

Wayne Divine applied on September 28, 1992. He had 10 years as a journeyman electrician (GCX 3). Divine listed IBEW Local 480 as his current employer and his position as assistant Business Agent/Organizing, on his application with Respondent. Respondent conceded that Divine applied at a time it was hiring and that General Counsel proved that Divine was qualified. Respondent argued that I should reconsider my decision that Respondent illegally refused to hire Divine on grounds outside the scope of *FES*. As shown above, I cannot engage in a de novo review of my underlying decision. General Counsel proved that Divine was qualified to perform Respondent's available work and Respondent was hiring at material times after Divine applied. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Divine in the absence of his Union affiliation.

Ronnie Fontana applied on October 2, 1992. He had 22 years as a journeyman electrician. He showed on his application that he has worked as wireman/welder and as electrician on all three previous jobs requested on Respondent's application. As shown above, Respondent admitted that Hugh Britt, Mark Greer, Ronnie Fontana, Floyd Sandiford, and Lyndon Vestal applied together wearing IBEW buttons and/or T-shirts. Respondent argued that President Young attempted to call Sandiford, Fontana, Greer, and Vestal to discuss employment. I found that Respondent unlawfully refused to hire Britt, Fontana and Greer. I agreed with Respondent in the underlying decision that Respondent proved it would not have hired Vestal in the absence of his union affiliation. As to Britt, Greer, Fontana, and Sandiford, Respondent argued that General Counsel failed to prove those four were not hired because of union animus. I found to the contrary in the underlying decision. General Counsel proved that Fontana was qualified to perform Respondent's available work. His job application also stated that he completed 4 years in the IBEW apprenticeship school. General Counsel proved that Fontana was qualified to perform Respondent's available work and Respondent was hiring at material times after Fontana applied. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Fontana in the absence of his union affiliation.

Joe Gallien applied on October 8, 1992. He was a journeyman electrician (GCX 3). Gallien did not testify. However, it is undisputed that he, Richard Wynn⁶ and Charles Jewell were interviewed by President Young on October 8, 1992. Gallien and Jewell were IBEW members and Young knew of their union membership. Gallien's job application with Respondent includes electrician jobs in all three spaces allowed for previous

employers and stated that he completed four years in the IBEW Electrical Alexandria (Louisiana) Joint Apprenticeship and Training Committee. General Counsel proved that Gallien was qualified to perform Respondent's available work and Respondent was hiring at material times after Gallien applied. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Gallien in the absence of his union affiliation.

Herbert Goudeau applied on October 21, 1992. He was an electrician with employers that filled all three entries on Respondent's application and he listed 2 years completed in the JATC Apprentice program in Alexandria, Louisiana (GCX 3). He listed the IBEW LOCAL # 576 as a reference on his job application. Herbert Goudeau did not testify. Respondent argued that the record did not support a finding that anyone with hiring authority actually saw Herbert Goudeau's application. However, that is not at issue in this remand. Respondent admitted that it received an application in his name and I find that application established Herbert Goudeau's qualifications as an electrician. General Counsel proved that Herbert Goudeau was qualified to perform Respondent's available work and Respondent was hiring at material times after Goudeau applied. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Herbert Goudeau in the absence of his Union affiliation.

Jerry Goudeau applied on October 21, 1992. He listed on his job application that he was an electrician with all three employers and had completed 4 years IBEW apprenticeship (GCX 3). Jerry Goudeau did not testify. Respondent argued that the record did not support a finding that anyone with hiring authority actually saw Jerry Goudeau's application. However, that is not at issue in this remand. Respondent admitted that it received an application in his name. General Counsel proved that Jerry Goudeau was qualified to perform Respondent's available work and Respondent was hiring at material times after Goudeau applied. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Jerry Goudeau in the absence of his Union affiliation.

Mark Greer applied on October 2, 1992. He listed experience as journeymen electrician with all the previous employers: that he had completed a 4 years apprenticeship and was a member IBEW Local 446 (GCX 3). As shown above, Respondent admitted that Hugh Britt, Mark Greer, Ronnie Fontana, Floyd Sandiford, and Lyndon Vestal applied together wearing IBEW buttons and/or T-shirts. Respondent argued that President Young attempted to call Sandiford, Fontana, Greer, and Vestal to discuss employment. Respondent argued that General Counsel failed to prove that it refused to hire Britt, Greer, Fontana and Sandiford because of union animus. I found to the contrary in the underlying decision. General Counsel proved that Greer was qualified to perform Respondent's available work and Respondent was hiring at material times after Greer applied. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Greer in the absence of his union affiliation.

⁶ Respondent argued that of the three applicants only Richard Wynn was offered a job because he was the only one of the three that appeared sincere in his willingness to work for what Respondent paid.

Charles Jewell applied on October 8, 1992. Jewell did not testify. However, it is undisputed that he, Richard Wynn⁷ and Joe Gallien were interviewed by President Young on October 8, 1992. Gallien and Jewell were IBEW members and Young knew of their union membership. Although the record includes a job application from Gallien there was no application from Jewell and I was unable to locate evidence of Jewell's qualifications for Respondent's jobs. Therefore, I find that General Counsel failed to prove that Charles Jewell was qualified to perform Respondent's work.

Jackie Kuykendal applied on October 8, 1992. He testified that he had been an electrician for 27 years. Kuykendal applied with Eric Sumrall and Michael Butler. They accompanied Assistant Business Agent Yelverton on a trip from near Laurel, Mississippi to Respondent's facility in West Monroe, Louisiana. Kuykendal and Butler testified that Project Manager Chambola interviewed them and they told Chambola of their union membership. Respondent argued those applications were misplaced and not considered and that Chambola did not pursue those applications because the applicants lived too far away from its jobs. Chambola pointed out that they lived 100 miles from West Monroe. However, Jackie Kuykendal told Chambola that they would work anywhere (GCX 8). Michael Butler, who applied with Kuykendal and Eric Sumrall, also testified about their applications with Project Manager Chambola. Kuykendal testified that he had just finished a job that he ran and that Sumrall and Butler worked for him. Kuykendal testified that Chambola was looking at their applications during the interview and Chambola said nothing during the interview that illustrated any concern with their qualifications. I find that evidence shows that Kuykendal was qualified. As to whether Respondent was hiring, Butler credibly testified that Chambola told them he could use them locally but it would be better for them to work in Jackson. The record shows that Respondent did hire at material times after Butler, Kuykendal, and Sumrall applied. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Kuykendal in the absence of his union affiliation.

Jerry Lambert applied on October 7, 1992. He listed his previous jobs as electrician on all three employers on Respondent's application form (GCX 3). Lambert did not testify. Respondent agreed in its brief that it did hire at times material to the date of Lambert's application and that in fact; it hired people with known union affiliations. Respondent argued that the record failed to show that Respondent knew of Lambert's application. I find those are matters that Respondent may raise on appeal that are not within the scope of this remand. I find the record shows that Lambert was qualified and that Respondent received his application during a period when it was hiring. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Lambert in the absence of his union affiliation.

Larry Nipper applied on September 28, 1992. He was a journeyman electrician since 1979 (GCX 3). His application in-

cluded jobs as electrician for all three previous employers listed on his application and that he completed 4 years JATC in Jackson, Mississippi. Nipper carried Journeyman Card # JE 432. Respondent admitted in its brief that Nipper was known by superintendent Richardson from previous work and Richardson testified that Nipper had a reputation of not being willing to work. However, Richardson did not tell Respondent President Young of Nipper's reputation. As shown in the underlying decision I did not credit testimony that President Young left a message on Nipper's answering machine and I found that Respondent unlawfully refused to hire Nipper. Nevertheless, Nipper admittedly left the area after a week and a half and moved to Denver. Regardless of whether I credit Young that he left a message on Nipper's answering machine, the evidence shows that Nipper was considered for employment on October 15, 1992. Young wrote on Nipper's job application "I called 10/15/92 9:17 am not at home got a recording." Nipper was unavailable at the time of Young's call. In view of that evidence and the *FES* decision, I find that Respondent was not hiring at a time when Nipper was available. Therefore, I find that Respondent proved it would not have hired Larry Nipper in the absence of his union affiliation.

Eddie Roberts applied on October 29, 1992. He was a journeyman electrician for 26 years. He listed jobs as electrician for all three employers on Respondent's application form and that he had completed 4 years IBEW Apprenticeship (GCX 3). I find that evidence shows that Roberts was qualified. Respondent argued that Roberts was told when he applied at the St. Dominics job that Respondent was not hiring and Roberts did not check back. Subsequently, Respondent argued, it hired only one more electrician—Robert Bunner—on that job and Bunner had previously worked for Respondent. That argument is a proper remand question—i.e., was Respondent hiring at the time of the application? I find the record supports Respondent in that regard. Robert Bunner applied on December 1, 1992, and was employed on the St. Dominics job from December 3, 1992 until March 3, 1993 and from April 12, 1993 until June 2, 1993. Alleged discriminatee Woodroe Silas was the next applicant hired at St. Dominics. Silas applied on May 17, 1993 and worked from May 24 until June 8, 1993. I find that Respondent was not hiring at its St. Dominics job at a time material to Roberts' application with one exception and Respondent showed that exception was for a former employee. Moreover, the evidence showed that Roberts did not check back with Respondent after submitting his application. I find that Respondent proved that it would not have hired Roberts in the absence of his Union affiliation.

Floyd Sandiford applied on October 2, 1992. He was a journeyman wireman for 20 years. He listed his job as wireman on all three previous employers shown on Respondent's application and that he completed 4 years IBEW apprenticeship (GCX 3). As shown above, Respondent admitted that Hugh Britt, Mark Greer, Ronnie Fontana, Floyd Sandiford, and Lyndon Vestal applied together wearing IBEW buttons and/or T-shirts. Respondent argued that President Young attempted to call Sandiford, Fontana, Greer, and Vestal to discuss employment and that that General Counsel failed to prove that it refused to hire Britt, Greer, Fontana, and Sandiford because of Union animus.

⁷ Respondent argued that of the three applicants only Richard Wynn was offered a job because he was the only one of the three that appeared sincere in his willingness to work for what Respondent paid.

I found to the contrary in the underlying decision. Moreover, General Counsel proved that Sandiford was qualified to perform Respondent's available work and Respondent was hiring at material times after Sandiford applied. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Sandiford in the absence of his union affiliation.

Eric Sumrall did not testify. However, record evidence established that he applied for work with Respondent on October 7, 1992. Sumrall applied with Jackie Kuykendal and Michael Butler. Butler testified that Project Manager Chambola interviewed them and they told Chambola of their union membership. Respondent argued those applications were misplaced and the applications were not considered because the applicants lived too far away from its jobs. Chambola pointed out that the applicants lived 100 miles from West Monroe. As to whether they were qualified, Butler testified that he had been a journeyman electrician for about 5 years. On cross-examination he testified that he and Eric Sumrall had worked together for union contractors before applying with Respondent. Kuykendal testified that he ran a job before his application and Butler and Sumrall worked for Kuykendal. Kuykendal and Butler's testimony shows that Sumrall was qualified and Respondent's project manager Chambola said nothing during the interview involving Butler, Kuykendal, and Sumrall that illustrated any concern with qualifications shown on their applications. As to whether Respondent was hiring, according to Butler, Chambola told them he could use them locally but it would be better for them to work in Jackson. Kuykendal told Chambola that they would work anywhere (GCX 8). General Counsel proved that Sumrall was qualified to perform Respondent's available work and Respondent was hiring at material times after Sumrall applied. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Sumrall in the absence of his union affiliation.

Wilburn Williams applied on November 11, 1992. He was a journeyman electrician for 14 years. Williams listed his job as electrician on all three previous employers on Respondent's application form (GCX 3). His showed on his application that he was currently employed. Williams called back 2 months after his application and was told Respondent was not hiring. Respondent argued that was correct and that it did not hire in the West Monroe vicinity from October 1992 until July 1993 with one exception. That exception was Ivan Hurt who Respondent hired in March 1993 (GCX 14) especially to perform cotton gin electrical work. The record does support Respondent in that regard. Moreover, there was no showing that Williams expressed a willingness to work at locations other than the West Monroe area. I find that Respondent proved it would not have hired Wilburn Williams in the absence of his union affiliation.

Sammy Yelverton applied on September 28, 1992. He had been a journeyman electrician since 1966. He listed employers including "self" and Mapp Elect. in Ellisville, Mississippi (GCX 3). His references include Jackie Kuykendal (see above). Yelverton is assistant business agent and organizer at Local 480. Yelverton testified that he filed an application with Respondent on September 28, 1992. Superintendent Harry

Richardson interviewed Yelverton. Yelverton asked Richardson how many people had applied for the job. Richardson told him that he was the eighth applicant. Richardson said that he had four applicants from the Union that morning and one of them was an assistant business manager. After talking about Yelverton's experience, Richardson said, "I have to ask you this, are you a Union member?" Yelverton admitted that he had been a member. After more discussion about the job, Richardson told Yelverton they would probably call him either September 30 or October 1. Yelverton did not hear from Respondent. He returned to the job on October 8 and talked with Harry Richardson. Richardson said they were not hiring at that time. Respondent argued that it was unaware of Yelverton's union affiliation. However, that matter was considered in the underlying decision and is not within the scope of the remand. General Counsel proved that Yelverton was qualified to perform Respondent's available work. I find that General Counsel has satisfied the burden established in *FES* and Respondent failed to prove it would have refused to hire Yelverton in the absence of his union affiliation.

ADDITIONAL CONCLUSIONS OF LAW⁸

1. Respondent by refusing to hire or, in the case of Phillips⁹, to rehire, any of the following employees because of their Union affiliation and preference has engaged in conduct in violation of section 8(a)(1) and (3) of the Act:

Steve Barthel	Hugh Britt	Michael Butler
Wayne Divine	Ronnie Fontana	Joe Gallien
Herbert Goudeau	Jerry Goudeau	Mark Greer
Jackie Kuykendal	Jerry Lambert	Donald Phillips
Floyd Sandiford	Eric Sumrall	Sammy Yelverton

2. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of section 2(6), (7), and (8) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent has illegally refused to hire or recall any of the below named employees in violation of sections of the Act, I shall order Respondent to offer those employees immediate and full instatement or reinstatement to the positions for which they applied and are qualified or, if those positions no longer exist, to substantially equivalent positions. I further order Respondent to make those employees whole for any loss of earnings suffered as a result of the discrimination against them. Backpay shall be computed as described in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as de-

⁸ The conclusions and order of the underlying decision remain in effect except the following alleged discriminatees are found to have been lawfully denied employment and are not entitled to any remedy: E.T. Brister, Charles Jewell, Larry Nipper, Eddie Roberts, and Wilburn Williams.

⁹ Phillips was not considered as part of the remand issues. His case involved discharge.

scribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Steve Barthel	Hugh Britt	Michael Butler
Wayne Divine	Ronnie Fontana	Joe Gallien
Herbert Goudeau	Jerry Goudeau	Mark Greer
Jackie Kuykendal	Jerry Lambert	Donald Phillips
Floyd Sandiford	Eric Sumrall	Sammy Yelverton

Upon the foregoing findings, conclusions of law and the entire record, and pursuant to section 10(c) of the Act, I issue the following recommended:

ADDITIONAL ORDER¹⁰

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is hereby ordered that Respondent, Wye Electric Co., Inc., West Monroe, Louisiana, its officers, agents, successors and assigns shall

1. Cease and desist from

(a) Refusing to employ job applicants and refusing to recall its employee from layoff, because of their Union or other protected activities.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer immediate and full instatement and, in the case of Donald Phillips, reinstatement, to the below listed employees in positions for which they applied and are qualified or, if non-existent, to substantially equivalent positions, and make them whole for any loss of earnings plus interest, suffered by reason of its illegal actions:

Steve Barthel	Hugh Britt	Michael Butler
Wayne Divine	Ronnie Fontana	Joe Gallien
Herbert Goudeau	Jerry Goudeau	Mark Greer
Jackie Kuykendal	Jerry Lambert	Donald Phillips
Floyd Sandiford	Eric Sumrall	Sammy Yelverton

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, and timecards, personnel records, reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in West Monroe, Louisiana, copies of the attached notice.¹¹ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by

¹⁰If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹¹If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director, Region 15, in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 29, 2000

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist any union
- Chose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT interrogate our employees about their activities on behalf of International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization.

WE WILL NOT threaten our employees with lay offs because of their union activities.

WE WILL NOT threaten our employees that Respondent's president's goal is to shut down unions in Mississippi, Arkansas, and Monroe.

WE WILL NOT threaten our employees that an employee is being assigned an out of state job in the hope he will resign because of his Union.

WE WILL NOT threaten to lay off our employees because of their union affiliation or preference.

WE WILL NOT refuse to employ the following named applicants:

Steve Barthel	Hugh Britt	Michael Butler
Wayne Divine	Ronnie Fontana	Joe Gallien
Herbert Goudeau	Jerry Goudeau	Mark Greer
Jackie Kuykendal	Jerry Lambert	Floyd Sandiford
Eric Sumrall	Sammy Yelverton	

WE WILL offer immediate and full instatement to the below listed employees in positions for which they applied and qualify or if nonexistent, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges:

Steve Barthel	Hugh Britt	Michael Butler
Wayne Divine	Ronnie Fontana	Joe Gallien
Herbert Goudeau	Jerry Goudeau	Mark Greer
Jackie Kuykendal	Jerry Lambert	Floyd Sandiford
Eric Sumrall	Sammy Yelverton	

WE WILL make the above named employees whole for any loss of earnings suffered by reason of our discrimination against them with interest.

WE WILL offer to Donald Phillips immediate reinstatement to his former position with full backpay and benefits with interest in accordance with the remedy section of this decision with no loss of seniority or other rights and privileges previously enjoyed.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WYE ELECTRIC CO., INC.